TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 365.

BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, AND EDWARD H. GAYNOR, APPELLANTS,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JULY 10, 1901.

(18,218.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 20, 1901.

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1 To the circuit court of the United States for the southern district of New York:

The petition of Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, respectfully shows to this court:

First. That your petitioners are and at all the times hereinafter mentioned were, citizens of the United States; Benjamin D. Greene being a resident of the State of Connecticut; John F. Gaynor and William T. Gaynor being residents of the State of New York, and Edward H. Gaynor being a resident of the State of Massachusetts, and they are not nor is either of them in any way connected with the land or naval forces of the said United States.

Second. That your petitioners and each of them are and is imprisoned and restrained of their liberty in the custody of William Henkel, United States marshal for the southern district of New York.

Third. That your petitioners have been committed and are detained by virtue of a warrant of removal under section 1014 of the Revised Statutes of the United States, signed by the Hon. Addison Brown, judge of the district court of the United States for the southern district of New York, and not by virtue of any judgment, decree or final order thereof.

A copy of such warrant of removal being hereto annexed marked Exhibit "G."

2 Fourth. That the cause or pretence of the imprisonment and restraint of your petitioners according to the best of their knowledge and belief, is that warrants for their arrest were issued by John A. Shields, United States commissioner, and that certain proceedings hereinafter set forth were had before such commissioner, who committed your petitioners to await a warrant of their removal to the eastern division of the southern district of Georgia, for trial upon an alleged indictment, purporting to have been found by the grand jury for the said eastern division of the southern district of Georgia, and that upon the proceedings before said commissioner, and upon application of the United States attorney for the southern district of Georgia, the judge of the district court of the United States for the southern district of New York, has granted the said warrant of removal.

Fifth. That the imprisonment and detention of your petitioners is without authority of law, and the said proceedings before the said commissioner are illegal, and the said warrant of removal was illegally issued, and in violation of articles IV and V of the Constitution of the United States, and section 1 of the 14th article of amendment thereto, which provide that the right of your petitioners to be secured in their persons against unreasonable searches and seizures shall not be violated and no warrant shall issue but upon

3 probable cause, supported by oath of *of* affirmation and particular- describing the person to be seized; and that no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, and that no

person shall be deprived of life, liberty or property without due process of law.

Sixth. That according to the best knowledge and belief of your petitioners, the basis of the proceedings before said commissioner, and upon which the warrant for their arrest was issued, was a complaint made by one Clarence S. Houghton, assistant United States attorney for the southern district of New York, which complaint was based upon information contained in an alleged indictment found by an alleged grand jury of the United States in and for the southern district of Georgia, and brought into the United States district court for said southern district, on the 8th day of December 1899; a copy of said complaint being hereto annexed and marked "A;" that said complaint was thereafter amended and a copy of said amended complaint is hereto annexed marked "B;" that said alleged indictment, as your petitioners are informed and believe, purported to be found under and in pursuance of sections 5438 and 5440 of the Revised Statutes of the United States, and charges your petitioners with conspiracy to defraud the said United States. That the said body purporting to be a grand jury for the said eastern
4 division of the *of the* southern district of Georgia, was not a legal grand jury empaneled and sworn according to law and particularly according to the requirements of section 2 of chapter 52 of the act of June 30, 1879, as shown by the record of testimony taken before said commissioner and which is hereto annexed and made a part hereof. That the said alleged indictment also was not found and returned by a grand jury drawn in the eastern division of the said southern district of Georgia, as it purports upon its face to have been, but was drawn in the western division of the said district, all of which was illegal and contrary to the statute in such case made and provided.

That the complaint of Clarence S. Houghton hereinbefore referred to and by which the proceedings before said commissioner, John A. Shields, were initiated, is hereto annexed marked Exhibit "A."

That under said complaint a warrant for the arrest of your petitioners was issued by said commissioner copy of which is hereto annexed marked Exhibit "A 1" and your petitioners voluntarily appeared before said commissioner and demanded an examination on the charges contained in the complaint made against them. Upon such examination proceedings were had as follows:

The defendants by their counsel moved to dismiss the complaint because the complaint set forth no crime or offence under the laws of the United States.

This motion was denied and an exception taken. The complaint was thereafter amended, such amended complaint being hereto annexed marked Exhibit "B."

5 The motion to dismiss the complaint was again renewed after such amendment on the same grounds, and the same was denied, to which the defendants duly excepted.

The Government thereupon offered in evidence a certified copy of the indictment set out in the amended complaint. Counsel for the defendants objected to the reception of said certified copy in evi-

dence on the ground that there was no statute or authority for receiving as evidence, in the United States court, a copy certified by the clerk of the court. This objection was overruled and an exception duly taken.

Evidence was then given on behalf of the Government tending to show that the defendants before the court were the defendants under their respective names mentioned in the indictment and the Government thereupon rested and the defendants, your petitioners, then offered evidence tending to show that there was no probable cause to believe that any offence charged in the complaint had been committed or that the defendants, your petitioners, were guilty of the offences charged in the indictment, which evidence was all excluded by the commissioner.

The commissioner thereupon held the defendants to await a warrant of removal by the United States district judge and thereafter a motion was made before Hon. Addison Brown, United States district judge for the southern district of New York, by the Government for a warrant of removal to remove the defendants
6 to the southern district of Georgia for trial upon the indictment referred to in the complaint and hereinbefore set out.

This motion was opposed by your petitioners and after due deliberation denied by the United States district judge, and an opinion rendered by him, of which a copy is hereto annexed marked Exhibit "C."

That thereafter and on motion of the United States attorney, an order was made by the United States district judge of which a copy is hereto annexed marked Exhibit "D."

That pursuant to said order further proceedings were had before John A. Shields, beginning on the 6th day of July 1900, at 2 p. m. The defendants objected to proceeding under said order and stated that they did not waive the right to any objection there may be to the regularity of the proceedings by reason of said order and objected that the commissioner had no right as a commissioner to further investigate the question inasmuch that by his holding the defendants to await a warrant of the removal of the district judge he had no further jurisdiction over the defendants.

A large number of witnesses were examined before the commissioner on behalf of the Government and on behalf of the defendants, your petitioners, which evidence was reported to the United States district judge for the southern district of New York, together with a finding by the United States commissioner, John A.
7 Shields, as follows:

"NEW YORK, *February 25th*, 1901.

"A careful examination of the evidence and the briefs, all of which are voluminous, establishes, in my judgment, that a case of probable cause has been made out requiring the defendants to be held to await a warrant of removal to the southern district of Georgia, being the district in which the indictment was found. The defendants, Benjamin D. Greene, Edward H. Gaynor, William T. Gaynor and John F. Gaynor, are accordingly held to await a war-

rant of removal to be issued by the United States district judge for the southern district of New York, or otherwise dealt with according to law.

JOHN A. SHIELDS,
United States Commissioner, S. D. of N. Y."

The matter again came before Hon. Addison Brown, United States district judge for the southern district of New York, and an application was made to him for a warrant to remove the defendants to the southern district of Georgia for trial on the indictment hereinbefore referred to. This application was opposed by the defendants, your petitioners, on various grounds; among others:

8 1st. That the indictment referred to in the complaint stated no crime or offence against the laws of the United States.

2nd. That there was no valid indictment upon which the defendants could be tried for the reason that the said indictment had not been found and returned by a grand jury drawn in accordance with the provisions of the statutes of the United States.

3rd. That the evidence then before the court did not show any probable cause to believe that the offence set out in the complaint had been committed by the defendants.

4th. That the finding of the commissioner, as hereinbefore set out, that there was probable cause to believe that an offence had been committed and that there was probable cause to believe that the defendants, your petitioners, had committed the offence, was without force or effect inasmuch as under the order sending the matter back to the commissioner, he only acted or could act as the arm of the court to take the testimony. That the question of probable cause must be passed upon by the district judge.

The said district judge refused to consider the question of probable cause and held that a warrant to remove the defendants to the southern district of Georgia should issue and thereupon rendered an opinion, a copy of which is hereto annexed, marked Exhibit "E."

9 That all the evidence taken before said commissioner bearing upon the question of the drawing and formation of the alleged grand jury that found the alleged indictment stated in the complaint in this action, is hereto annexed, marked Exhibit "F."

That such evidence truly and fully sets forth the facts in relation to the preparation of the jury-box and the drawing of the alleged grand jury from said jury-box, which alleged grand jury presented and found the alleged indictment mentioned in the complaint herein, and which is heretofore referred to and set out.

Seventh. That the petitioners were not in the southern district of Georgia at the time said alleged grand jury was drawn, nor at the time said alleged indictment was presented and filed in the United States district court for the eastern division of the southern district of Georgia, and were not informed of the drawing of such alleged grand jury prior to the time the said indictment was filed. They did not know of the finding of such alleged indictment for which the same was filed and presented, and that prior to their arrest on

the warrant of Commissioner Shields, as hereinbefore set forth, they were not arrested and held to await the action of any grand jury in said southern district of Georgia, or elsewhere, nor had they prior to the proceedings on their appearance before Commissioner Shields, as herein set out, any opportunity to object to said alleged
10 grand jury or any action by it.

Eighth. Your petitioners further show that at the time of the drawing of the said alleged grand jury, namely, November 22nd 1899, Emory Speer was the United States district judge for the southern district of Georgia, and that he drew the said alleged grand jury; made the order in regard thereto hereinbefore referred to, and held the term of court at which the said alleged grand jury presented and filed the said alleged indictment.

That by law the said Emory Speer is required to hold the several terms of the United States district court for the eastern division of the southern district of Georgia.

That the said Emory Speer will hold the term of the United States district court for the eastern division of the southern district of Georgia, fixed by statute for the second Tuesday in August 1901, at which term and time your petitioners by said warrant of removal are to appear for trial, and unless this court hears and determines the questions herein set forth relating to said alleged grand jury and its right to act in the premises, the said district judge of the southern district of Georgia will at said term or some subsequent term of said court, have before him and be obliged to pass on, the question of the validity and legality of the orders made by him relating to said alleged grand jury, and also as to the legality of his own acts in drawing said alleged grand jury.

11 Ninth. Your petitioners further show that at the time of the filing of said alleged indictment, Marion Erwin was and is now, the United States district attorney for the southern district of Georgia, and is also assistant United States attorney in charge of this removal proceeding in the southern district of New York.

That as appears by Exhibit "337" put in evidence before Commissioner John A. Shields, and hereinbefore set out as part of Exhibit "F," that while your petitioners were in New York pending such removal proceeding and while they were under bail in such proceeding in the southern district of New York, the said Marion Erwin required them to appear in the eastern division of the southern district of Georgia to make any objection they might have to said alleged grand jury.

That your petitioners are informed and believe, that he now claims and insists that because of your petitioners' failure to appear as above required that they are barred and estopped in that court from questioning the legality and validity of said alleged grand jury.

If this contention be sustained, then, unless this court hears and passes on the said questions, these petitioners will be tried on an alleged indictment in said court in Georgia, although the fact is that such indictment was never found by any legally authorized grand

jury, but was presented and filed in court by a body of men purporting to be a grand jury in whose selection and drawing
12 every statute of the United Statutes relating thereto was disregarded and set at naught.

That the petitioners are now held for trial for an infamous crime without the indictment of a grand jury in violation of the rights secured to them by the Constitution of the United States.

Tenth. Your petitioners further show and state the fact to be that the alleged grand jury that found and presented the alleged indictment under which the petitioners are to be tried upon the execution of the said warrant of removal, was drawn from a jury-box that did not have three hundred names of persons qualified to act as jurors in it at the time of such drawing.

That the box from which said alleged grand jury was drawn was not prepared by a jury commissioner and clerk of the court, by each putting in alternately the name of a person as required by law and that such grand jury was without power or authority to hear evidence or do any act required of a lawfully qualified and legally constituted grand jury.

Eleventh. That notwithstanding the above facts, the said United States marshal for the southern district of New York, and persons acting under his orders and authority, are detaining your petitioners and are about to remove them to the eastern division of the southern district of Georgia for trial upon the said pretended indict-
13 ment hereinbefore referred to, and in pursuance of the proceedings had before the said commissioner and the warrant of removal issued thereupon by the district judge.

Twelfth. That the detention of said petitioners and their removal in pursuance of said proceedings and warrant are without authority of law and that any further proceedings in pursuance thereof, and the further detention and imprisonment of your said petitioners, would be and is, unlawful.

Wherefore your petitioners pray that a writ of *habeas corpus* may issue out of this court directed to the United States marshal for the southern district of New York, commanding him to take the bodies of your petitioners before this honorable court as shall be directed in said writ, so that this court may be able to proceed thereupon and to do what shall appear to them of right ought to be done.

Dated, New York, June 8th 1901.

B. D. GREENE.
JOHN F. GAYNOR.
WM. T. GAYNOR.
EDWARD H. GAYNOR.

14 UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, being severally duly sworn, do depose and say

that the facts set forth in the above petition subscribed by them are true.

B. D. GREENE.
JOHN F. GAYNOR.
WM. T. GAYNOR.
EDWARD H. GAYNOR.

Sworn to before me this 8th day of June 1901.
JOHN A. SHIELDS,
U. S. Comm'r.

15 EXHIBIT "A." Referred to in Annexed Petition.

THE UNITED STATES
vs.
BENJAMIN D. GREENE ET ALS.

Complaint for removal of defendants Benjamin D. Greene, Edward H. Gaynor, William T. Gaynor, and John F. Gaynor to the district court of the United States of America for the southern district of Georgia.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Clarence S. Houghton, assistant United States attorney, in and for the southern district of New York, being duly sworn, says on information and belief:

That heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and ninety-seven, Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, being evil-disposed persons, all late of the southern district of Georgia, did, within said district, and within the jurisdiction of said court, wrongfully, knowingly and feloniously amongst themselves and with divers other persons to the grand jurors of the aforesaid southern district of Georgia unknown, conspire, confederate and agree together to defraud the United States of America of divers large sums of money by means of a certain fraudulent scheme devised by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, and which was then and there in process of execution by them:

16 That said fraudulent scheme was first devised, concocted and put in operation in said southern district of Georgia by and between the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, on or about the year of our Lord one thousand eight hundred and ninety-one, has been continuously in process of execution in said southern district of Georgia by and between said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter from about the said year eighteen hundred and ninety-one until on or about the first day of October, in the year of our Lord eighteen hundred and ninety-nine:

That the said Oberlin M. Carter was an officer of the United States Army, in the corps of engineers, and had been continuously from about the year of our Lord eighteen hundred and eighty-eight until about the twentieth day of July, in the year of our Lord eighteen hundred and ninety-seven, as such engineer officer, in local charge in said southern district of Georgia, of what is usually called the "Savannah district" for the improvement by the United States of rivers and harbors, and as such officer he was engaged in and about the execution of such river and harbor improvements as were made in said Savannah district, within the southern judicial district of Georgia, during said period; and as such officer in charge of said Savannah district he was vested with sundry powers, duties and discretion, during said period, and, amongst other things, with power, duty and discretion in, proposing from time to time projects for the improvement of rivers and harbors in said district; with power, duty and discretion in devising and drafting from time to time specifications for contracts for the improvements proposed to be made in said district; and with power, duty and discretion in, from time to
17 time, drafting and suggesting forms of advertisements for giving notice to the public that competitive bids would be received by him for the construction of such proposed works; and with power, duty and large discretion in causing to be fixed and fixing the time such advertisements would be published prior to the opening of bids; and with power, duty and discretion in suggesting and causing to be fixed and fixing the time, designated in specifications for contracts, within which the successful bidder would be required to commence work; and with power, duty and discretion in giving out information in regard to such contracts to be let; and with power, duty and discretion in receiving proposals for and recommending the awarding of such contracts; and with power, duty and discretion in approving or rejecting the bonds required to be given by such contractors; and with power, duty and discretion in superintending the work to be done by such contractors in said district and of approving and accepting or of rejecting the work done by such contractors according as same was in accordance with the requirements of such contracts or not; and with power, duty and discretion in suggesting and approving modifications of such contracts; and with power, duty and discretion in approving or rejecting the accounts rendered to him by such contractors for work done or claimed by such contractors to be done by them, according as said accounts should be fair and honest, or false and fraudulent; and when in funds as a disbursing officer he was vested with power, duty and discretion in paying such contractors or refusing to pay such contractors the amounts claimed by them to be due them for work done according as such claims were honest and fair or false and fraudulent:

That the said fraudulent scheme contemplated; that the
18 said Oberlin M. Carter, should, as such engineer officer of the United States so in charge of said Savannah district, so fraudulently exercise the said powers of his office and the said discretion so vested in him, that competition in the bidding for such contracts

to be let for the United States through him should be cut off, and that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, in the name of some one of them, or of some other person or corporation for their benefit, would be the only real bidders for such contract work in said district, and that all contracts which were from time to time let for the improvements of the rivers and harbors in said Savannah district would be obtained by some one or other of said conspirators, or by and in the name of some other person or corporation, but secretly for the benefit of said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, and so that the said works in said district put out to be done for the United States on contracts would be let at high and exorbitant cost to the United States of America; and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should with fraudulent intent so devise and draft the specifications of contracts for constructing jetty works and training walls to be from time to time let by the United States in said district through him, as to provide that the engineer in charge as aforesaid, might at his option require to be put in the work by the contractor a large number of square yards of one specified design of what is usually called a log and brush mattress, to be paid for by the United States to the contractor by the square yard, which design of mattress if so required to be put in by the engineer, would make the cost of the fulfilling of the contract comparatively very great and ex-
19 pensive to the contractor, and which specifications should further provide that the engineer in charge as aforesaid, might at his option, and at the same price per square yard to be paid by the United States to the contractor, in lieu of the use of said design of log and brush mattress of expensive construction as aforesaid, require to be placed in the works by the contractor the same number of square yards of another specified design of what is usually called a brush mattress of much cheaper cost comparatively to the contractor when placed in the works, and of very much less value to the United States, and that the description of the said design of mattress of cheaper cost to the contractor as aforesaid, should be so vaguely set forth in the specifications that the same could easily by a fraudulent and strained construction of said description be made to apparently cover the acceptance and approval by said engineer in charge as aforesaid, of large numbers of square yards of mattresses to be furnished by the contractor of a construction of brush mattresses of very much cheaper cost to the contractor furnishing the same, and of very much less value to the United States than would be the number of square yards of the log and brush mattresses of the other design of mattress which might under the specifications be called for by the engineer as aforesaid, and that said specifications should be so devised and drafted as aforesaid, by said Oberlin M. Carter in order that all persons not parties to said fraudulent scheme should be kept in ignorance until after the bids were all in, which design of mattress mentioned in the specifications the

engineer in charge would require to be put in the works, and so that bidders not a party to said fraudulent scheme would be compelled to put in bids based on the design of mattress of the most expensive and costly construction mentioned in the specifications, while
20 the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter would be advised before the putting in and opening of bids that the said Oberlin M. Carter, engineer in charge, would, if they, or some one for them, were the successful bidder, only require to be put in the works under such contract, mattresses made on the very cheapest design, and that design construed by him in the superintending, approving and accepting of said works, most strongly against the United States and most liberally in favor of the contractor, with the intent that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or some one of them, or some person or corporation acting secretly for their benefit, would always be the successful bidders for such contract work, at the very lowest cost to the contractor and at the very highest cost to the United States for the material put in consistent with keeping the fraud concealed; and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should with fraudulent intent so devise and draft the specifications of contracts for jetty works, training walls and river and harbor improvements to be from time to time let by the United States in said district through him, as to require from the successful bidder for such contract work, the furnishing at one price per unit, of work and material of several types of such work and material largely varying in cost to the contractor, and reserving by the provisions of the specifications the option to the said engineer officer in charge, the determination after the letting of the contract which type of such work and material should be used, but that said Oberlin M. Carter, engineer in charge, would prior to the time of opening bids for such contract work
21 secretly inform the said other parties to said fraudulent scheme that he would only require the cheapest type of such material and work to be put in under such contract with intent to fraudulently enable the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or some of them, or some person or corporation for their benefit, to obtain such contract at the least cost to themselves and greatest cost to the United States for the value of the work and material furnished, and with the fraudulent intent that if the successful bidder should be some person not a party to said fraudulent scheme, the said engineer officer in charge would require from said contractor for such work, the furnishing of that type of such work and material specified in the contract most costly to the contractor, and that said engineer officer in charge, with fraudulent intent would in such case give the specifications such rigid and unfair construction against the interest of such contractor that the performance of such contract would be ruinous to such contractor and thus further competition with the said Benjamin D. Greene, John F. Gaynor, Wil-

liam T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter for the obtaining of similar contract work would be thereafter effectually shut off; and that the said Oberlin M. Carter, as such engineer officer of the United States, in charge of said Savannah district, with fraudulent intent, should in the actual construction of the work done under such contracts obtained by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or by one of them, or in the name of some person or corporation secretly for their benefit, so change the quantities and type of material and work required to be furnished by the contractor, from the quantities and type
22 of material and work used in the specifications to canvass for bids for such contracts, as would ensure the contractors the maximum profit in such contract work at the least cost to the contractors, even though such change should give the United States work and material of much less value to the United States; and that said Oberlin M. Carter, as such engineer officer of the United States, in charge of said Savannah district, should when some person other than the said parties to said fraudulent scheme was the lowest bidder at the letting of such contract work, and one of said conspirators, or some one for their benefit was a higher bidder for such contract work, recommend the rejection of such lowest bid for any slight defect in the proposal, while in similar instances when it should become necessary for said conspirators to put in at the last minute—a second bid to meet unanticipated competition at the letting of such contract work, said engineer officer would knowingly and corruptly approve for acceptance their proposals and guarantees known to him to be forgeries; and that said Oberlin M. Carter, as such engineer officer of the United States, in charge of said Savannah district, should knowingly and fraudulently approve for payment accounts which should be so fraudulently rendered to him, as such engineer officer in charge as aforesaid, by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or by some one of them, or by and in the name of the person or corporation, which should by the successful operation of such fraudulent scheme have obtained such contracts for the secret benefit of the said conspirators aforesaid, and which accounts should be so rendered as aforesaid, for such inferior work and material to be put in on such works as aforesaid, at the exorbitant and fraudulent prices stated in such contracts, so fraudulently
23 to be made by said Oberlin M. Carter, as such engineer officer in charge as aforesaid, with said conspirators, or some person or corporation for them as aforesaid; and that said Oberlin M. Carter as such engineer officer in charge of said Savannah district as aforesaid, would when in funds as a disbursing officer fraudulently pay over to the said conspirators, or to some one of them, or some person or corporation for their benefit, the amounts of money for which said accounts so rendered should be by said Oberlin M. Carter, as such engineer officer in charge, so approved, and that said conspirators should divide between them and appropriate to their own use said moneys so fraudulently to be obtained; and that said

fraudulent scheme contemplated that the said Benjamin D. Greene John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter would use some one or more or all of said means and devices aforesaid and such other and additional devices as might become necessary for the accomplishment of the general fraudulent design of the scheme hereinbefore set forth; and that on the said first day of January, in the year of our Lord eighteen hundred and ninety-seven, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter were proceeding with the construction of certain works in said eastern division of the southern district of Georgia under two contracts, which contracts had been prior to that time, to wit, on the eighth day of October, eighteen hundred and ninety-six, obtained by the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter for their secret benefit in the name of the Atlantic Contracting Company, a corporation organized in the year eighteen hundred and ninety-two, under the laws
24 of the State of West Virginia and of which corporation the said Benjamin D. Greene, John F. Gaynor, and William T. Gaynor held all the shares of stock at the date of its charter except stock of the par value of fifty dollars, and which contracts had been so obtained fraudulently from the United States by means of said fraudulent scheme and devices hereinbefore set forth through the said Oberlin M. Carter, engineer officer in charge of Savannah district, as aforesaid, and one of which said contracts was for the construction of jetties at Cumberland sound within the said eastern division of the southern district of Georgia, and the other of said contracts was for the construction of training walls and improving the harbor of Savannah within the said eastern division of the southern district of Georgia, and the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, on the first day of January, eighteen hundred and ninety-seven, in the said eastern division of the southern district of Georgia, then and there unlawfully, knowingly and feloniously amongst themselves and with said divers other persons to the grand jurors aforesaid unknown, did, band, conspire, confederate and agree together as aforesaid, to defraud the United States of said divers large sums of money hereinbefore mentioned by means of applying said fraudulent scheme in and to the execution and completion of the work under said contracts so made on the eighth day of October, eighteen hundred and ninety-six as aforesaid and in the obtaining of the money for the fraudulent accounts which should be rendered under said contracts to said Oberlin M. Carter, as such engineer officer as aforesaid and generally to carry such fraudulent scheme into execution in the obtaining of all contracts of like character which might thereafter be let in said Savannah district
25 by the United States through the said Oberlin M. Carter, as such engineer officer, contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Deponent says his belief is based upon information contained in a true bill of indictment found by the grand jurors of the United States in and for the said southern district of Georgia, and brought into the court on the 8th day of December, 1899, a copy of which said indictment, duly certified by the clerk of the district court of the United States of America, for the southern district of Georgia, is hereto annexed and marked Exhibit "A," and made part of this deposition; that a bench warrant against Benjamin D. Greene was issued therefor on the 9th day of December, 1899, a duly certified copy of which is hereto annexed and marked Exhibit "B;" that a bench warrant against John F. Gaynor was issued therefor, on the 9th day of December, 1899, a certified copy of which is hereto annexed and marked Exhibit "C;" that a bench warrant against William T. Gaynor was issued therefor, on the 9th day of December, 1899, a duly certified copy of which is hereto annexed and marked Exhibit "D;" that a bench warrant against Edward H. Gaynor was issued therefor on the 9th day of December, 1899, a duly certified copy of which is hereto annexed and marked Exhibit "E."

Deponent says that he is informed and believes that the said defendants, Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor are now within the said southern district of New York.

CLARENCE S. HOUGHTON.

Sworn to before me this 13th day of December, 1899.

JNO. A. SHIELDS,
U. S. Com., S. D. of N. Y.

26 EXHIBIT A.

UNITED STATES OF AMERICA, }
Eastern Division, Southern District of Georgia, } *ss:*

I, H. H. King, clerk of the district court of the United States of America, for the southern district of Georgia, do hereby certify that the writing annexed to this certificate is a true copy of its respective original now on file and remaining on record in my office, to wit: Indictment No. 322, conspiracy, vio. secs. 5440–5438. R. S. United States *vs.* Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter.

In witness whereof I have caused the seal of the said court to be hereunto affixed, at the city of Savannah in the southern [SEAL.] district of Georgia, this eighth day of December in the year of our Lord, one thousand eight hundred and ninety-nine and of the Independence of the United States, the one hundred and twenty-fourth.

H. H. KING, *Clerk*,
Per S. F. B. GILLESPIE,
Deputy Clerk.

27 UNITED STATES OF AMERICA, }
Eastern Division, Southern District of Georgia. }

United States District Court, November Term, 1899.

The grand jurors of the United States chosen, selected, impaneled and sworn in and for the eastern division of the southern district of Georgia, upon their oaths present:

1st count.

That heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hund-er and ninety-seven, Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, being evil-disposed persons, all late of said division and district, did, within said division and district and within the jurisdiction of this court, unlawfully, knowingly and feloniously amongst themselves and with divers other persons to the grand jurors aforesaid unknown, conspire, confederate and agree together to defraud the United States of America of divers large sums of money by means of a certain fraudulent scheme devised by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter and which was then and there in process of execution by them: that said fraudulent scheme was first devised, concocted and put in operation in said southern district of Georgia by and between the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter on or about the year of our Lord one thousand eight hundred and ninety-one, and has been continuously in process of execution
28 in said southern district of Georgia by and between said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connelly and Oberlin M. Carter from about the said year eighteen hundred and ninety-one until on or about the first day of October in the year of our Lord eighteen hundred and ninety-nine.

That the said Oberlin M. Carter was an officer of the United States Army in the corps of engineers, and had been continuously from about the year of our Lord eighteen hundred and eighty-eight until about the twentieth day of July, in the year of our Lord eighteen hundred and ninety-seven, as such engineer officer, in local charge in said southern district of Georgia of what is usually called the "Savannah district" for the improvement by the United States of rivers and harbors, and as such officer he was engaged in and about the execution of such river and harbor improvements as were made in said Savannah district, within the southern judicial district of Georgia, during said period; and as such officer in charge of said Savannah district he was vested with sundry powers, duties and discretion during said period, and amongst other things, with power, duty and discretion in, proposing from time to time projects for the improvement of rivers and harbors in said district; with power, duty and discretion in devising and drafting from time to time specifications for contracts for the improvements proposed to be

made in said district; and with power, duty and discretion in, from time to time drafting and suggesting forms of advertisements for giving notice to the public that competitive bids would be received by him for the construction of such proposed works; and with power, duty and large discretion in causing to be fixed and fixing the time such advertisements would be published prior to the opening of bids; and with power, duty and discretion in suggesting and causing to be fixed and fixing the time, designated in specifications for contracts, within which the successful bidder
29 would be required to commence work; and with power, duty and discretion in giving out information in regard to such contracts to be let; and with power, duty and discretion in receiving proposals for and recommending the awarding of such contracts; and with power, duty and discretion in approving or rejecting the bonds required to be given by such contractors; and with power, duty and discretion in superintending the work to be done by such contractors in said district, and of approving and accepting or rejecting the work done by such contractors, according as the same was in accordance with the requirements of such contracts or not; and with power, duty and discretion in suggesting and approving modifications of such contracts; and with power, duty and discretion in approving or rejecting the accounts rendered to him by such contractors for work done or claimed by such contractors to be done by them, according as said accounts should be fair and honest, or false and fraudulent; and when in funds as a disbursing officer he was vested with power, duty and discretion in paying such contractors or refusing to pay such contractors the amounts claimed by them to be due them for work done according as such claims were honest and fair, or false and fraudulent.

That the said fraudulent scheme contemplated; that the said Oberlin M. Carter, should, as such engineer officer of the United States so in charge of said Savannah district, so fraudulently exercise the said powers of his office and the said discretion so vested in him, that competition in the bidding for such contracts to be let for the United States through him should be cut off, and that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, in the name of some one of them, or of some other person or corpo-
30 ration for their benefit, would be the only real bidders for such contract work in said district, and that all contracts which were from time to time let for the improvements of the rivers and harbors in said Savannah district would be obtained by some one or other of said conspirators, or by and in the name of some other person or corporation, but secretly for the benefit of said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, and so that the said works in said district put out to be done for the United States on contracts would be let at high and exorbitant cost to the United States of America; and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should with fraudulent intent so devise and draft the

specifications of contracts for constructing jetty works and training walls to be from time to time let by the United States in said district through him, as to provide that the engineer in charge as aforesaid, might at his option require to be put in the work by the contractor a large number of square yards of one specified design of what is usually called a log and brush mattress, to be paid for by the United States to the contractor by the square yard, which design of mattress if so required to be put in by the engineer would make the cost of the fulfilling of the contract comparatively very great and expensive to the contractor, and which specifications should further provide that the engineer in charge as aforesaid, might at his option, and at the same price per square yard to be paid by the United States to the contractor, in lieu of the use of said design of log and brush mattress of expensive construction as aforesaid, require to be placed in the works by the contractor the same number of square yards of another specified design of what is usually called a brush mattress of much cheaper cost comparatively to the contractor
31 when placed in the works, and of very much less value to the United States, and that the description of the said design of mattress of cheaper cost to the contractor as aforesaid, should be so vaguely set forth in the specifications that the same could easily by a fraudulent and strained construction of said description be made to apparently cover the acceptance and approved by said engineer in charge as aforesaid, of large numbers of square yards of mattresses to be furnished by the contractor of a construction of brush mattresses of very much cheaper cost to the contractor furnishing the same, and of very much less value to the United States than would be the same number of square yards of the log and brush mattresses of the other design of mattress which might under the specifications be called for by the engineer as aforesaid, and that said specifications should be so devised and drafted as aforesaid, by said Oberlin M. Carter in order that all persons not parties to said fraudulent scheme should be kept in ignorance until after the bids were all in, which design of mattress mentioned in the specifications the engineer in charge would require to be put in the works, and so that bidders not a party to said fraudulent scheme would be compelled to put in bids based on the design of mattress of the most expensive and costly construction mentioned in the specifications, while the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter would be advised before the putting in and opening of bids that the said Oberlin M. Carter, engineer in charge, would, if they, or some one for them, were the successful bidder, only require to be put in the works under such contract, mattresses made on the very cheapest design, and that design construed by him in the superintending, approving and accepting of said
32 works, most strongly against the United States and most liberally in favor of the contractor, with the intent that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or some one of them, or some person or corporation acting secretly for

their benefit, would always be the successful bidders for such contract work at the very lowest cost to the contractor and at the very highest cost to the United States for the material put in consistent with keeping the fraud concealed; and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should with fraudulent intent so devise and draft the specifications of contracts for jetty works, training walls and river and harbor improvements to be from time to time let by the United States in said district through him, as to require from the successful bidder for such contract work, the furnishing at one price per unit, of work and material of several types of such work and material largely varying in cost to the contractor, and reserving by the provisions of the specifications the option to the said engineer officer in charge, the determination after the letting of the contract which type of such work and material should be used, but that said Oberlin M. Carter, engineer in charge, would prior to the time of opening bids for such contract work secretly inform the said other parties to said fraudulent scheme that he would only require the cheapest type of such material and work to be put in under such contract with intent to fraudulently enable the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or some of them, or some person or corporation for their benefit, to obtain such contract at the least cost to themselves and greatest cost to the United States for the value of the work and material
33 furnished, and with the fraudulent intent that if the successful bidder should be some person not a party to said fraudulent scheme, the said engineer officer in charge would require from said contractor for such work, the furnishing of that type of such work and material specified in the contract most costly to the contractor, and that said engineer officer in charge, with fraudulent intent would in such case give the specifications such rigid and unfair construction against the interest of such contractor that the performance of such contract would be ruinous to such contractor and thus further competition with the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter for the obtaining of similar contract work would be thereafter effectually shut off; and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, with fraudulent intent, should in the actual construction of the work done under such contracts obtained by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or by one of them, or in the name of some person or corporation, secretly for their benefit, so change the quantities and type of material and work required to be furnished by the contractor, from the quantities and type of material and work used in the specifications to canvass for bids for such contracts, as would ensure the contractors the maximum profit in such contract work at the least cost to the contractors, even though such change should give the United States work and material of much less value to the United States.

And that said Oberlin M. Carter as such engineer officer of the United States in charge of said Savannah district, should, when some person other than the said parties to said fraudulent
34 scheme was the lowest bidder at the letting of such contract work, and one of said conspirators, or some one for their benefit, was a higher bidder for such contract work, recommend the rejection of such lowest bid for any slight defect in the proposal, while in similar instances when it should become necessary for said conspirators to put in at the last minute, a second bid to meet unanticipated competition at the letting of such contract work, said engineer officer would knowingly and corruptly approve for acceptance their proposals and guarantees known to him to be forgeries; and that said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should knowingly and fraudulently approve for payment accounts which should be so fraudulently rendered to him, as such engineer officer in charge as aforesaid, by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or by some one of them, or by and in the name of the person or corporation, which should by the successful operation of such fraudulent scheme have obtained such contracts for the secret benefit of the said conspirators aforesaid, and which accounts should be so rendered as aforesaid, for such inferior work and material to be put in on such works as aforesaid, at the exorbitant and fraudulent prices stated in such contracts, so fraudulently to be made by said Oberlin M. Carter, as such engineer officer in charge as aforesaid, with said conspirators, or some person or corporation for them as aforesaid; and that said Oberlin M. Carter as such engineer officer in charge of said Savannah district as aforesaid, would when in funds as a disbursing officer fraudulently pay over to the said conspirators, or to some one of them, or some person or corporation for their benefit, the amounts of money for which said accounts so rendered should be by said Oberlin M. Carter as such engineer officer in charge so approved, and that said conspira-
35 tors should divide between them and appropriate to their own use said moneys so fraudulently to be obtained; and that said fraudulent scheme contemplated that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter would use some one or more or all of said means and devises aforesaid and such other and additional devises as might become necessary for the accomplishment of the general fraudulent design of the scheme hereinbefore set forth;

And that on the said first day of January, in the year of our Lord eighteen hundred and ninety-seven, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter were proceeding with the construction of certain works in said eastern division of the southern district of Georgia, under two contracts which contracts had been prior to that time, to wit, on the eighth day of October, eighteen hundred and ninety-six, obtained by the said Benjamin D.

Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter for their secret benefit in the name of the Atlantic Contracting Company, a corporation organized in the year eighteen hundred and ninety-two, under the laws of the State of West Virginia and of which corporation the said Benjamin D. Greene, John F. Gaynor and William T. Gaynor held all the shares of stock at the date of its charter except stock of the par value of fifty dollars, and which contracts had been so obtained fraudulently from the United States by means of said fraudulent scheme and devices hereinbefore set forth through the said Oberlin M. Carter, engineer officer in charge of Savannah district as aforesaid, and one of which said contracts was for the construction of jetties at Cumberland sound within the said eastern
36 division of the southern district of Georgia, and the other of said contracts was for the construction of training walls and improving the harbor of Savannah within the said eastern division of the southern district of Georgia, and the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, on the said first day of January, eighteen hundred and ninety-seven, in the said eastern division of the southern district of Georgia, then and there unlawfully, knowingly and feloniously amongst themselves and with said divers other persons to the grand jurors aforesaid unknown, did, band, conspire, confederate and agree together as aforesaid, to defraud the United States of said divers large sums of money hereinafter mentioned by means of applying said fraudulent scheme in and to the execution and completion of the work under said contracts so made on the 8th day of October, eighteen hundred and ninety-six, as aforesaid, and in the obtaining of the money for the fraudulent accounts which should be rendered under said contracts to said Oberlin M. Carter, as such engineer officer as aforesaid, and generally to carry said fraudulent scheme into execution in the obtaining of all contracts of like character which might thereafter be let in said Savannah district by the United States through the said Oberlin M. Carter, as such engineer officer, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

2d count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that in pursuance of said conspiracy in the above count of this indictment set forth, the said Michael A. Connally did within the said eastern division of the southe[illegible]t of Georgia
and within the jurisdiction of said court, afterwards, to wit,
37 on the seventeenth day of March, A. D. 1897, then and there assist the said Oberlin M. Carter in the preparation of a certain document purporting to be articles of agreement entered into on the seventeenth day of March, A. D. 1897, between Oberlin M. Carter, corps of engineers, U. S. Army, of the first part, and the Atlantic Contracting Company, of New York, city of N. Y., of the second part, and which purports to modify the contract entered into by

and between the Atlantic Contracting Company and said Oberlin M. Carter, captain corps of engineers, for the United States, made on the eighth day of October, A. D. 1896, for work at the entrance of Cumberland sound, Georgia, which contract is mentioned in the above preceding count of this indictment, and which document, so made on the seventeenth day of March, A. D. 1897, as aforesaid, purports to be signed by O. M. Carter, captain corps of eng'n'rs, U. S. A., and by the Atlantic Contracting Co., John F. Gaynor, president, and by William T. Gaynor, secretary, and upon which the name of said Michael A. Connally appears as a witness, and he, the said Michael A. Connally, did then and there forge the name of said William T. Gaynor, secretary, so purporting to be signed to said document; and he, the said Michael A. Connally, did likewise then and there assist the said Oberlin M. Carter in the preparation of a document purporting to be dated the eighteenth day of March, A. D. 1897, and purporting to be the written consent of Anson M. Bangs and Eugene Hughes to the modified agreement dated March 17, 1897, above described; and he, the said Michael A. Connally, did then and there forge the said signatures of Anson M. Bangs and Eugene Hughes signed to said document purporting to be such assent of said sureties, and did then and there forge the signatures of James C. Bogart and
38 Henry Smith, which signatures purport to be signed on said document as witnessing the signatures of said Anson M. Bangs and Eugene Hughes to said document; and that he, the said Oberlin M. Carter, did then and there knowingly cause said forged documents to be then and there forwarded to the War Department of the United States for approval, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

3d count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that in pursuance of said conspiracy in the first count of this indictment mentioned, within said eastern division of the southern district of Georgia, and within the jurisdiction of this court, afterwards, to wit, on the first day of July, in the year of our Lord eighteen hundred and ninety-seven, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter did cause to be presented to the said Oberlin M. Carter, then and there an officer in the military service of the United States, to wit, captain in the corps of engineers in charge of the Savannah district aforesaid, for approval a certain claim against the United States, they, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, then and there well knowing said claim to be fraudulent, and which said claim was then and there in the words and figures following, to wit:

"SAVANNAH, GA., *July* 1, 1897.

The United States engineer department to the Atlantic Contracting Company, Dr.

To labor and material furnished during the month of January, 1897, under formal written contract dated October 8, 1896, on work of improving harbor at Savannah, Georgia, as follows:

31,724.23 square yards of brush mattresses at $0.95.....	$30,138.02
2,297.86 cubic yards of fourth-class stone at $2.75.....	6,319.11
	36,457.13
Less 10 per cent. retainer.....	3,645.71
Amount due.....	32,811.42

Submitted by

THE ATLANTIC CONTRACTING COMPANY,
By EDWARD H. GAYNOR, *Treasurer*."

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

4th count.

And the grand jurors, aforesaid, upon their oaths aforesaid, do further present that in pursuance of said conspiracy in the first count of this indictment mentioned, afterwards, to wit, on the sixth day of July, in the year of our Lord eighteen hundred and ninety-seven, in the southern district of the State of New York and within the jurisdiction of this court, the said Oberlin M. Carter, as such engineer officer in charge of the Savannah district, as aforesaid, did then and there issue to the said Atlantic Contracting Company a certain check signed by said Oberlin M. Carter as captain corps of engineers, United States Army, drawn on the assistant treasurer of the United States, New York, and payable to the order of the Atlantic Contracting Company, for the sum of three hundred and forty-five thousand dollars for contract work improving Cumberland sound, Georgia, and did then and there deliver the said check to the said John F. Gaynor in payment of a claim of the said Atlantic Contracting Company for the sum of three hundred and forty-five thousand dollars for work claimed to have been done by the said Atlantic Contracting Company in the improvement of Cumberland sound under said contract of October 8, 1896, in the first count of this indictment mentioned, which claim he the said Oberlin M. Carter, then and there knew to be fraudulent, and which said check was then and there in the words and figures following, to wit:

"WAR U. S. ENG'R, OFFICE ENGINEERS,
SAVANNAH, GA., *July* 6, 1897.

No. 270,537.

C. Assistant treasurer of the U. S., New York,

Pay to the order of the Atlantic Contracting Co. three hundred and forty-five thousand $\frac{00}{100}$ dollars.
$345,000.00.

O. M. CARTER,
Capt. Corps of Eng'r- U. S. A., Engineer U. S. A.

State object for
which drawn.
Contract work.
Improving
Cumberland sound, Ga.

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

5th count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that in pursuance of said conspiracy in the first count of this indictment mentioned, afterwards, to wit, on the sixth day of July, in the year of our Lord eighteen hundred and ninety-
41 seven, in the southern district of the State of New York, and within the jurisdiction of this court, the said Oberlin M. Carter, as such engineer officer in charge of the Savannah district, as aforesaid, did then and there issue to the said Atlantic Contracting Company a certain check signed by said Oberlin M. Carter, as captain corps of engineers, United States Army, drawn on the assistant treasurer of the United States, New York, and payable to the order of the Atlantic Contracting Company, for the sum of two hundred and thirty thousand seven hundred and forty-nine dollars and ninety cents for contract work improving Savannah harbor, Georgia, and did then and there deliver the said check to the said John F. Gaynor in payment of a claim of the said Atlantic Contracting Company for the sum of two hundred and thirty thousand seven hundred and forty-nine dollars and ninety cents for work claimed to have been done by the said Atlantic Contracting Company in the improvement of Savannah harbor, Georgia, under said contract of October 8, 1896, in the first count of this indictment mentioned, which claim he, the said Oberlin M. Carter, then and there knew to be fraudulent, and which said check was then and there in the words and figures following, to wit.

WAR U. S. ENG'R OFFICE ENGINEERS,
SAVANNAH, GA., *July* 6, 1897.

No. 270,536.

B. Assistant treasurer of the U. S., New York,

Pay to the order of the Atlantic Contracting Co. two hundred and thirty thousand seven hundred and forty-nine $\frac{90}{100}$ dollars.
$230,749.90. O. M. CARTER,
Capt. Corps of Eng., U. S. A., Engineer U. S. A.

42 State object for which drawn
Contract work
Improving
Savannah harbor Ga.

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

6th count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that on the said first day of January, in the year of our Lord one thousand eight hundred and ninety-seven, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, being evil-disposed persons, all late of said division and district, did within said division and district and within the jurisdiction of this court, unlawfully, knowingly and feloniously amongst themselves and with divers other persons to the grand jurors aforesaid unknown, band, conspire, confederate and agree together to defraud the United States of America of divers large sums of money by means of a certain fraudulent scheme devised by the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter; that the said Oberlin M. Carter, was on the day and year aforesaid, an officer of the United States Army in the corps of engineers and was then and there, as such engineer officer, in local charge in said southern district of Georgia of what is usually called the Savannah district for the improvement by the United States of rivers and harbors, and as such officer he was then and there engaged in and about the execution of such river and harbor improvements as were being made and to be made in said Savannah district, within the said
43 southern judicial district of Georgia, and as such engineer officer in charge of said Savannah district as aforesaid, he was vested with the usual powers, duties and discretion of engineer officers of the United States in charge of river and harbor improvement districts; and that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter then and there did band, conspire, confederate and agree together as aforesaid that the said Oberlin M. Carter, as such engineer officer of the United States so in charge of

said Savannah district, should so fraudulently exercise said powers, duties and discretion of the said office of engineer in charge of said district, that the competition provided for by law in the bidding for such contracts to be let for the United States through said engineer officer for the construction of the public improvements of the United States in the said Savannah district should be cut off, and that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, in the name of some one of them, or of some other person or corporation for their benefit, would be the only real bidders for such contract work in said district and that all such contracts which were from time to time let for the improvements of the rivers and harbors of said Savannah district would be so fraudulently and corruptly obtained by some one or other of said conspirators, or by and in the name of some other person or corporation, but secretly for the benefit of said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, at high and exorbitant cost to the United States for the work to be done and material to be furnished; and that the said Oberlin M. Carter would so devise, suggest and inaugurate projects for
44 the improvements of the rivers and harbors in said district and so devise and draft the specifications for work and contracts to be let for such improvements and so superintend the execution of such works, contracts for which should have been obtained by the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or by some one of them, or in the name of some other person or corporation secretly for their benefit, that large amounts of unnecessary and useless work should fraudulently be undertaken and done under such contracts for the United States by such contractors on such contracts; and that in the execution of all contracts for improvements made in said district for the United States through the said Oberlin M. Carter, as such officer in charge, he, the said Oberlin M. Carter, as such engineer officer in charge, would exercise the powers, duties and discretion of his office fraudulently and corruptly in favor of the contractor on such of said contracts as might be so obtained by the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or by some one of them, or other person or corporation for their secret benefit as aforesaid; and that the said Oberlin M. Carter would so falsely and fraudulently exercise the powers, duties and discretion of his office in the approval and acceptance of the work so fraudulently done under such contracts, so let and executed for the said public works so constructed by the Government of the United States in said district under and through the said Oberlin M. Carter as engineer officer in charge, that said contractors would receive payment for the construction of such works under such contract at high and exorbitant rates for the poorest and cheapest class of material and work put in under said contracts at least cost to such contractors, contrary to the form of the statute in such case
45 made and provided and against the peace and dignity of the said United States.

7th count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that in pursuance of said conspiracy in the last preceding count of this indictment set forth, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, afterwards, to wit, on the first day of July in the year of our Lord eighteen hundred and ninety-seven, within said division and district, did then and there knowingly, wilfully and feloniously cause to be presented to the said Oberlin M. Carter then and there as such engineer officer in charge of said Savannah district for approval and payment, a claim against the Government of the United States for the sum of three hundred and forty-five thousand dollars, for labor, material and supplies so claimed to have been furnished the United States of America during the months of December, 1898, January, 1897, February, 1897, March, 1897, April, 1897, May, 1897, and June, 1897, on work of improving Cumberland sound, Georgia, within said southern district of Georgia, under a formal written contract, dated October 8, 1896, they, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, then and there well knowing said claim to be fraudulent, contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

8th count.

And the grand jurors aforesaid, upon their oath- aforesaid, do further present that in pursuance of said conspiracy, in the
46 last but one preceding count in this indictment, mentioned, afterwards to wit, on the sixth day of July, in the year of our Lord eighteen hundred and ninety-seven, in the southern district of the State of New York and within the jurisdiction of this court, the said Oberlin M. Carter, as such engineer officer in charge of the Savannah district as aforesaid, did then and there issue to the said Atlantic Contracting Company a certain check signed by said Oberlin M. Carter as captain of engineers, United States Army, drawn on the assistant treasurer of the United States, New York, and payable to the order of the Atlantic Contracting Company, for the sum of three hundred and forty-five thousand dollars for contract work improving Cumberland sound, Georgia, and did then and there deliver the said check to the said John F. Gaynor in payment of a claim of the said Atlantic Contracting Company for the sum of three hundred and forty-five thousand dollars for work claimed to have been done by the said Atlantic Contracting Company in the improvement of Cumberland sound under said contract of October 8, 1896, in the last preceding count of this indictment mentioned, which claim he, the said Oberlin M. Carter, then and there knew to be fraudulent and which said check was then and there in the words and figures following, to wit:

"WAR U. S. ENG'R, OFFICE ENGINEERS,
SAVANNAH, GA., *July* 6, 1897.

No. 270,537.

C. Assistant treasurer of the U. S., New York,

Pay to the order of the Atlantic Contracting Co. three hundred and forty-five thousand $^{00}_{100}$ dollars.

$345,000.00. O. M. CARTER,
Capt. Corps of Eng'r, U. S. A., Engineer U. S. A.

47 State object for which drawn.
Contract work
Improving
Cumberland sound, Ga.;"

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

9th count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that on the said first day of July, in the year of our Lord eighteen hundred and ninety-seven, within the eastern division of the southern district of Georgia and within the jurisdiction of this court, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, did then and there unlawfully, knowingly, wilfully and feloniously amongst themselves and with divers other persons to the grand jurors aforesaid unknown, combine, conspire, confederate and agree together to defraud the Government of the United States by obtaining the allowance and payment by the United States through the said Oberlin M. Carter, he, the said Oberlin M. Carter, being then and there a captain in the corps of engineers of the United States Army, and as such captain in the corps of engineers, being then and there engaged in the work of improving for the Government the rivers and harbors of what is usually known as the "Savannah district" for the improvement of rivers and harbors, and he, the said Oberlin M. Carter, being then and there in the military service of the United States, and as such captain in the corps of engineers, being then and there a disbursing officer of the United States, entrusted with the disbursement of money applicable to such
48 improvements in said Savannah district,—of a certain fraudulent claim, and which said fraudulent claim was then and there a claim for labor and material claimed to have been furnished by the Atlantic Contracting Company, a corporation chartered under the laws of the State of West Virginia, under a contract theretofore entered into on the 8th day of October, A. D. 1896, for improving Cumberland sound within the State of Georgia, and which contract had been entered into between the said Atlantic Contracting Company and the said Oberlin M. Carter, as captain on the corps of engineers of the United States as aforesaid, and which said

fraudulent claim was for the sum of three hundred and forty-five thousand dollars for work, labor and supplies claimed to have been furnished to the United States by said Atlantic Contracting Company for said work at Cumberland sound, during the months of December, 1896, January, 1897, February, 1897, March, 1897, April, 1897, May, 1897, and June, 1897.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, afterwards, to wit, on the first day of July, in the year of our Lord eighteen hundred and ninety-seven, in furtherance of and according to the said conspiracy, combination, confederacy and agreement amongst themselves, had as aforesaid, did unlawfully and fraudulently cause to be presented to the said Oberlin M. Carter as such officer then and there in the military service of the United States as aforesaid, a certain claim against the Government of the United States, they, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, well knowing that said claim was fraudulent, for the purpose of obtaining the approval and payment of said claim by the said Oberlin M. Carter, as such captain
49 in the corps of engineers of the United States Army in charge of said Savannah district as aforesaid, and which said fraudulent claim was then and there in the words and figures following, to wit:

"SAVANNAH, GA., *July* 1, 1897.

The United States engineer department to the Atlantic Contracting Company, Dr.

To labor and material furnished during the month of December, 1896, on work of improving Cumberland sound, Georgia, under formal written contract dated October 8, 1896, as follows:

18,727.34 square yards of mattresses @ $1.10.....	$20,600.07
1,968.06 cubic yards of third-class stone @ $3.90.....	7,675.43
	28,275.50
Less 10 per cent retained.....	2,827.55
Amount due.....	25,447.95

Submitted by

THE ATLANTIC CONTRACTING COMPANY,
By EDWARD H. GAYNOR, *Treasurer*."

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

10th count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that on the said first day of July, in the year of our

Lord eighteen hundred and ninety-seven, within the eastern division of the southern district of Georgia and within the jurisdiction of this court, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and
50 Oberlin M. Carter, did then and there unlawfully, knowingly, wilfully and feloniously amongst themselves and with divers other persons to the grand jurors aforesaid unknown, combine, conspire, confederate and agree together to defraud the Government of the United States by obtaining the allowance and payment by the United States through the said Oberlin M. Carter, he, the said Oberlin M. Carter, being then and there a captain in the corps of engineers of the United States Army, and as such captain in the corps of engineers being then and there engaged in the work of improving for the Government the rivers and harbors of what is usually known as the Savannah district, for the improvement of rivers and harbors, and he, the said Oberlin M. Carter, being then and there in the military service of the United States and as such captain in the corps of engineers, being then and there a disbursing officer of the United States entrusted with the disbursement of money applicable to such improvements in said Savannah district, of a certain fraudulent claim, and which said fraudulent claim was then and there a claim for labor and material claimed to have been furnished by the Atlantic Contracting Company, a corporation chartered under the laws of the State of West Virginia, under a contract theretofore entered into on the 8th day of October, A. D. 1896, for improving harbor at Savannah, within the State of Georgia, and which contract had been entered into between the said Atlantic Contracting Company and the said Oberlin M. Carter, as captain in the corps of engineers of the United States as aforesaid, and which said fraudulent claim was for the sum of two hundred and thirty thousand seven hundred and forty-nine dollars and ninety cents for work, labor and supplies claimed to have been furnished to the United States by said Atlantic Contracting Company for said work at said harbor during the months of December, 1896, January, 1897,
51 February, 1897, March, 1897, April, 1897, May, 1897, and June, 1897.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, afterwards, to wit, on the first day of July, in the year of our Lord eighteen hundred and ninety-seven, in furtherance of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, did unlawfully and fraudulently cause to be presented to the said Oberlin M. Carter, as such officer then and there in the military service of the United States as aforesaid, a certain claim against the Government of the United States, they, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter well knowing that said claim was fraudulent, for the purpose of obtaining the approval and payment of said claim by the said Oberlin M. Carter, as such captain in the corps of en-

gineers of the United States Army, in charge of said Savannah district as aforesaid, and which said fraudulent claim was then and there in the words and figures following, to wit:

"SAVANNAH, GA., *July* 1, 1897.

The United States engineer department to the Atlantic Contracting Company, Dr.

To labor and material furnished during the month of February, 1897, under formal written contract, dated October 8, 1896, on work of improving harbor at Savannah, Georgia, as follows:

52	23,151.66 square yards of mattresses @ $0.95.....	$21,994.08
	1,544.99 cubic yards of fourth-class stone @ $2.75.	4,248.72
		26,242.80
	Less 10 per cent. retained.....	2.624.28
	Amount due.....	23,618.52

Submitted by

THE ATLANTIC CONTRACTING COMPANY,
10. By EDWARD H. GAYNOR, *Treasurer.*"

contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

MARION ERWIN,
United States District Attorney.

A true bill.
Dec. 8th, 1899.
THOMAS S. McKEY, *Foreman.*

Endorsed on back as follows:
No. 322. United States district court, eastern division, southern district of Ga. United States *vs.* Benjamin D. Greene, *et al.* 5440. R. S. 5438 R. S. Indictment for conspiracy, etc. Filed December 8th, 1899. S. F. B. Gillespie, deputy clerk, Marion Erwin, U. S. att'y.

EXHIBIT B.

UNITED STATES OF AMERICA, }
Eastern Division, Southern District of Georgia. }

The President of the United States to the marshal of the district of Georgia and for his deputies or any or either of them:

Whereas, at a district court of the United States of America, for the southern district of Georgia, held at the city of Savannah, within and for the southern district of Georgia aforesaid on the 8th
53 day of December, in the year of our Lord one thousand and eight hundred and ninety-nine, the grand jurors in and for the said southern district of Georgia brought into the said court a true bill of indictment against one Benjamin D. Greene, late of the south-

ern district of the State of Georgia, for having unlawfully conspired with Oberlin M. Carter and others to defraud the United States in and about the letting and execution of certain river and harbor improvements in the said division and district in violation of section 5440, R. S., and for having unlawfully conspired with the said Oberlin M. Carter and others to present certain fraudulent accounts aggregating five hundred and seventy-five thousand seven hundred and forty-nine and $\frac{90}{100}$ dollars to the said Oberlin M. Carter then and there a disbursing officer of the United States for approval and payment.

As by the said indictment, now remaining on file and of record in the said court may more fully appear, to which indictment the said Benjamin D. Greene has not yet appeared or pleaded.

Now, therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said Benjamin D. Greene and bring his body before the said court at the United States court-room in the city of Savannah, to answer the indictment aforesaid, and to be further dealt with as the law directs.

Herein fail not.

Witness, the Honorable Emory Speer, judge of the district court of the United States at Savannah, this 9th day of December, in the year of our Lord one thousand eight hundred and ninety-nine, and in the 124th year of the Independence of the United States of America.

[SEAL.]

S. F. B. GILLESPIE,
Deputy Clerk.

54 (Endorsed on back as follows:)

No. 322. In the dist. court of the United States, for the southern district of Georgia. United States *vs.* Benjamin D. Greene, *et al.* Indictment. Charge, conspiracy, &c., sec. 5440, R. S. Bench warrant. Issued 9th day of December, 1899. Marion Erwin, U. S. dist. attorney.

EXHIBIT C.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia.

The President of the United States to the marshal of the district of Georgia and for his deputies or any or either of them:

Whereas, at a district court of the United States of America, for the southern district of Georgia, held at the city of Savannah, within and for the southern district of Georgia aforesaid, on the 8th day of December, in the year of our Lord one thousand and eight hundred and ninety-nine, the grand jurors in and for the said southern district of Georgia brought into the said court a true bill of indictment against one John F. Gaynor, late of the southern district of the State of Georgia, for having unlawfully conspired with Oberlin M. Carter and others to defraud the United States in and about the etting and execution of certain river and harbor improvements in

the said division and district in violation of section 5440, R. S., and for having unlawfully conspired with the said Oberlin M. Carter and others to present certain fraudulent accounts aggregating five hundred and seventy-five thousand seven hundred and forty-nine and $\frac{20}{100}$ dollars to the said Oberlin M. Carter, then and there a disbursing officer of the United States, for approval and payment.

55 As by the said indictment, now remaining on file and of record in the said court may more fully appear to which indictment the said John F. Gaynor has not yet appeared or pleaded.

Now, therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said John F. Gaynor and bring his body before the said court at the United States court-room in the city of Savannah, to answer the indictment aforesaid, and to be further dealt with as the law directs.

Herein fail not.

Witness, the Honorable Emory Speer, judge of the district court of the United States at Savannah, this 9th day of December, in the year of our Lord one thousand eight hundred and ninety-nine, and in the 124th year of the Independence of the United States of America.

[SEAL.]

S. F. B. GILLESPIE,
Deputy Clerk.

(Endorsed on back as follows:)

No. 322. In the dist. court of the United States for the southern district of Georgia. United States *vs.* John F. Gaynor, *et al.* Indictment. Charge, conspiracy, &c., sec. 5440, R. S. Bench warrant. Issued 9th day of December, 1899. Marion Erwin, U. S. dist. attorney.

56 EXHIBIT D.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia.

The President of the United States to the marshal of the district of Georgia and for his deputies or any or either of them:

Whereas, at a district court of the United States of America, for the southern district of Georgia, held at the city of Savannah, within and for the southern district of Georgia aforesaid, on the 8th day of December, in the year of our Lord one thousand and eight hundred and ninety-nine, the grand jurors in and for the said southern district of Georgia brought into the said court a true bill of indictment against one William T. Gaynor, late of the southern district of the State of Georgia, for having unlawfully conspired with Oberlin M. Carter and others to defraud the United States in and about the letting and execution of certain river and harbor improvements in the said division and district in violation of section 5440, R. S., and for having unlawfully conspired with the said Oberlin M. Carter and others to present certain fraudulent accounts aggregating five hundred and seventy-five thousand seven hundred and forty-nine and $\frac{20}{100}$ dollars

to the said Oberlin M. Carter then and there a disbursing officer of the United States for approval and payment.

As by the said indictment, now remaining on file and of record in the said court may more fully appear to which indictment the said William T. Gaynor has not yet appeared or pleaded.

Now, therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said William T. Gaynor and bring his body before the said court at
57 the United States court-room in the city of Savannah, to answer the indictment aforesaid, and to be further dealt with as the law directs.

Herein fail not.

Witness, the Honorable Emory Speer, judge of the district court of the United States at Savannah, this 9th day of Decem-
[SEAL.] ber, in the year of our Lord one thousand eight hundred and ninety-nine, and in the 124th year of the Independence of the United States of America.

S. F. B. GILLESPIE,
Deputy Clerk.

(Endorsed on back as follows:)

No. 322. In the dist. court of the United States, for the southern district of Georgia. United States *vs.* William T. Gaynor *et al.* Indictment. Charge, conspiracy, &c., sec. 5440, R. S. Bench warrant. Issued 9th day of December, 1899. Marion Erwin, U. S. dist. attorney.

EXHIBIT E.

UNITED STATES OF AMERICA, }
Eastern Division, Southern District of Georgia. }

The President of the United States to the marshal of the district of Georgia and for his deputies or any or either of them:

Whereas, at a district court of the United States of America, for the southern district of Georgia, held at the city of Savannah, within and for the southern district of Georgia aforesaid, on the 8th day of December, in the year of our Lord one thousand and eight hundred and ninety-nine, the grand jurors in and for the said southern district of Georgia brought into the said court a true bill of indictment against one Edward H. Gaynor, late of the southern district of the State of Georgia, for having unlawfully conspired with
58 Oberlin M. Carter and others to defraud the United States in and about the letting and execution of certain river and harbor improvements in the said division and district in violation of section 5440, R. S., and for having unlawfully conspired with the said Oberlin M. Carter and others to present certain fraudulent accounts aggregating five hundred and seventy-five thousand seven hundred and forty-nine and $\frac{90}{100}$ dollars to the said Oberlin M. Carter then and there a disbursing officer of the United States for approval and payment.

As by the said indictment, now remaining on file and of record

in the said court may more fully appear, to which indictment the said Edward H. Gaynor has not yet appeared or pleaded.

Now, therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said Edward H. Gaynor and bring his body before the said court at the United States court-room in the city of Savannah, to answer the indictment aforesaid, and to be further dealt with as the law directs.

Herein fail not.

Witness, the Honorable Emory Speer, judge of the district court of the United States at Savannah, this 9th day of December, in the year of our Lord one thousand eight hundred and ninety-nine, and in the 124th year of the Independence of the United States of America.

[SEAL.]

S. F. B. GILLESPIE,
Deputy Clerk.

(Endorsed on back as follows:)

No. 322. In the dist. court of the United States, for the southern district of Georgia. United States *vs.* Edward H. Gaynor, *et al.* Indictment, charge, conspiracy, &c., sec. 5440, R. S. Bench warrant. Issued 9th day of December, 1899. Marion Erwin, U. S. dist. attorney.

59 EXHIBIT "A[1]." Referred to in Annexed Petition.

The President of the United States to the marshal of the United States for the southern district of New York and to his deputies or any or either of them:

Whereas, complaint on oath hath been made to me, charging that Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, being evil-disposed persons, did on or about the first day of January, 1897, at the southern district of Georgia, *did*, within said district, and within the jurisdiction of said court, unlawfully, knowingly and feloniously amongst themselves, and with divers other persons unknown, conspire, confederate and agree together to defraud the United States of America of divers large sums of money by means of a certain fraudulent scheme devised by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, and which was then and there in process of execution by them:

That said fraudulent scheme was first devised, concocted and put in operation in said southern district of Georgia, by and between the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, on or about the year of our Lord one thousand eight hundred and ninety-one, and has been continuously in process of execution in said southern district of Georgia by and between said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter from about the said year eighteen

hundred and ninety-one until on or about the first day of October, in the year of our Lord eighteen hundred and ninety-nine:

That the said Oberlin M. Carter was an officer of the United States Army in the corps of engineers, and had been continuously
60 from about the year of our Lord eighteen hundred and eighty-eight until about the twentieth day of July, in the year of our Lord eighteen hundred and ninety-seven, as such engineer officer in local charge in said southern district of Georgia, of what is usually called the "Savannah district" for the improvement by the United States of rivers and harbors, and as such officer he was engaged in and about the execution of such river and harbor improvements as were made in said Savannah district, within the southern judicial district of Georgia, during said period; and as such officer in charge of said Savannah district he was vested with sundry powers, duties and discretion during said period, and amongst other things;—with power, duty and discretion, in proposing from time to time projects for the improvement of rivers and harbors in said district; with power, duty and discretion in devising and drafting from time to time specifications for contracts for the improvements proposed to be made in said district; and with power, duty and discretion in from time to time drafting and suggesting forms of advertisements for giving notice to the public that competitive bids would be received by him for the construction of such proposed works; and with power, duty and large discretion in causing to be fixed and fixing the time such advertisements would be published prior to the opening of bids; and with power, duty and discretion in suggesting and causing to be fixed and fixing the time designated in specifications for contracts, within which the successful bidder would be required to commence work; and with power, duty and discretion in giving out information in regard to such contracts to be let; and with power, duty and discretion in receiving proposals for and recommending the awarding of such contracts; and with power, duty and discretion in approving or rejecting the bonds required to be given by such
61 contractors; and with power, duty and discretion in superintending the work to be done by such contractors in said district and of approving and accepting or of rejecting the work done by such contractors according as same was in accordance with the requirements of such contracts or not; and with power, duty and discretion in suggesting and approving modifications of such contracts; and with power, duty and discretion in approving or rejecting the accounts rendered to him by such contractors for work done or claimed by such contractors to be done by them, according as said accounts should be fair and honest, or false and fraudulent; and when in funds as a disbursing officer he was vested with power, duty and discretion in paying such contractors or refusing to pay such contractors the amounts claimed by them to be due them for work done according as such claims were honest and fair, or false and fraudulent:

That the said fraudulent scheme contemplated that the said Oberlin M. Carter, should, as such engineer officer of the United States so in charge of said Savannah district, so fraudulently exercise the said

powers of his office and the said discretion so vested in him, that competition in the bidding for such contracts to be let for the United States through him should be cut off, and that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, in the name of some one of them, or of some other person or corporation for their benefit, would be the only real bidders for such contract work in said district, and that all contracts which were from time to time let for the improvements of the rivers and harbors in said Savannah district would be obtained by some one or other of said conspirators, or by and in the name of some other person or corporation, but secretly
62 for the benefit of said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, and so that the said works in said district put out to be done for the United States on contracts would be let at high and exorbitant cost to the United States of America; and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should with fraudulent intent so devise and draft the specifications of contracts for constructing jetty works and training walls to be from time to time let by the United States in the said district through him, as to provide that the engineer in charge as aforesaid, might at his option require to be put in the work by the contractor a large number of square yards of one specified design of what is usually called a log and brush mattress, to be paid for by the United States to the contractor by the square yard, which design of mattress if so required to be put in by the engineer would make the cost of the fulfilling of the contract comparatively very great and expensive to the contractor, and which specifications should further provide that the engineer in charge as aforesaid, might at his option, and at the same price per square yard to be paid by the United States to the contractor, in lieu of the use of said design of log and brush mattress of expensive construction as aforesaid, require to be placed in the works by the contractor the same number of square yards of another specified design of what is usually called a brush mattress of much cheaper cost comparatively to the contractor when placed in the works, and of very much less value to the United States, and that the description of the said design of mattress of cheaper cost to the contractor as aforesaid, should be so vaguely set forth in the specifications that the same could easily by a fraudulent and strained construction of said description be made to ap-
63 parently cover the acceptance and approval by said engineer in charge as aforesaid, of large numbers of square yards of mattresses to be furnished by the contractor of a construction of brush mattresses of very much cheaper cost to the contractor furnishing the same, and of very much less value to the United States than would be the number of square yards of the log and brush mattresses of the other design of mattress which might under the specifications be called for by the engineer as aforesaid, and that said specifications should be so devised and drafted as aforesaid by said Oberlin M. Carter in order that all persons not parties to said

fraudulent scheme should be kept in ignorance until after the bids were all in, which design of mattress mentioned in the specifications the engineer in charge would require to be put in the works, and so that bidders not a party to said fraudulent scheme would be compelled to put in bids based on the design of mattress of the most expensive and costly construction mentioned in the specifications, while the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter would be advised before the putting in and opening of bids that the said Oberlin M. Carter, engineer in charge, would, if they, or some one for them, were the successful bidder, only require to be put in the works under such contract, mattresses made on the very cheapest design, and that design construed by him in the superintending, approving and accepting of said works, most strongly against the United States and most liberally in favor of the contractor, with the intent that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or some one of them, or some person or corporation acting secretly for their benefit, would always
64 be the successful bidders for such contract work, at the very lowest cost to the contractor and at the very highest cost to the United States for the material put in consistent with keeping the fraud concealed; and that the said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should with fraudulent intent so devise and draft the specifications of contracts for jetty works, training walls and river and harbor improvements to be from time to time let by the United States in said district through him, as to require from the successful bidder for such contract work, the furnishing at one price per unit, of work and material of several types of such work and material largely varying in cost to the contractor, and reserving by the provisions of the specifications the option to the said engineer officer in charge, the determination after the letting of the contract which type of such work and material should be used, but that said Oberlin M. Carter, engineer in charge, would prior to the time of opening bids for such contract work secretly inform the said other parties to said fraudulent scheme that he would only require the cheapest type of such material and work to be put in under such contract with intent to fraudulently enable the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or some of them, or some person or corporation for their benefit, to obtain such contract at the least cost to themselves and greatest cost to the United States for the value of the work and material furnished, and with the fraudulent intent that if the successful bidder should be some person not a party to said fraudulent scheme, the said engineer officer in charge, would require from said contractor for such work, the furnishing of that type of such work and material specified in the contract most costly to the contractor, and that said engineer officer in charge,
65 with fraudulent intent, would in such case give the specifications such rigid and unfair construction against the interest

of such contractor that the performance of such contract would be ruinous to such contractor and thus further competition with the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter for the obtaining of similar contract work would be thereafter effectually shut off; and that the said Oberlin M. Carter, as such engineer officer of the United States, in charge of said Savannah district with fraudulent intent, should in the actual construction of the work done under such contracts obtained by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or by one of them, or in the name of some person or corporation, secretly for their benefit, so change the quantities and type of material and work required to be furnished by the contractor, from the quantities and type of material and work used in the specifications to canvass for bids for such contracts, as would ensure the contractors the maximum profit in such contract work at the least cost to the contractors, even though such change should give the United States work and material of much less value to the United States; and that said Oberlin M. Carter, as such engineer officer of the United States in charge of said Savannah district, should when some person other than the said parties to said fraudulent scheme was the lowest bidder at the letting of such contract work, and one of said conspirators, or some one for their benefit, was a higher bidder for such contract work, recommend the rejection of such lowest bid for any slight defect in the proposal, while in similar instances when it should become necessary for said conspirators to put in at the last minute, a second bid to meet unanticipated
66 competition at the letting of such contract work, said engineer officer would knowingly and corruptly approve for acceptance their proposals and guarantees known to him to be forgeries; and that said Oberlin M. Carter, as such engineer officer of the United States, in charge of said Savannah district, should knowingly and fraudulently approve for payment accounts which should be so fraudulently rendered to him, as such engineer officer in charge as aforesaid, by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter, or by some one of them, or by and in the name of the person or corporation, which should by the successful operation of such fraudulent scheme have obtained such contracts for the secret benefit of the said conspirators aforesaid, and which accounts should be so rendered as aforesaid for such inferior work and material to be put in on such works as aforesaid, at the exorbitant and fraudulent prices stated in such contracts, so fraudulently to be made by said Oberlin M. Carter, as such engineer officer in charge as aforesaid, with said conspirators, or some person or corporation for them as aforesaid; and that said Oberlin M. Carter, as such engineer officer in charge of said Savannah district as aforesaid, would when in funds as a disbursing officer fraudulently pay over to the said conspirators, or to some one of them, or some person or corporation for their benefit, the amounts of money for which said accounts so rendered should be by said Oberlin M. Carter, as such engineer officer in

charge so approved, and that said conspirators should divide between them and appropriate to their own use said moneys so fraudulently to be obtained and that said fraudulent scheme contemplated that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter would use some one or more or all of said
67 means and devises aforesaid and such other and additional devices as might become necessary for the accomplishment of the general fraudulent design of the scheme hereinbefore set forth; and that on the said first day of January, in the year of our Lord eighteen hundred and ninety-seven, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter were proceeding with the construction of certain works in said eastern division of the southern district of Georgia under two contracts, which contracts had been prior to that time, to wit: on the eighth day of October, eighteen hundred and ninety-six, obtained by the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter for their secret benefit in the name of the Atlantic Contracting Company, a corporation organized in the year eighteen hundred and ninety-two, under the laws of the State of West Virginia and of which corporation the said Benjamin D. Greene, John F. Gaynor, and William T. Gaynor held all the shares of stock at the date of its charter except stock of the par value of fifty dollars, and which contracts had been so obtained fraudulently from the United States by means of said fraudulent scheme and devices hereinbefore set forth through the said Oberlin M. Carter, engineer officer in charge of Savannah district as aforesaid, and one of which said contracts was for the construction of jetties at Cumberland sound within the said eastern division of the southern district of Georgia, and the other of said contracts was for the construction of training walls and improving the harbor of Savannah within the said eastern division of the southern district of Georgia, and the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and
68 Oberlin M. Carter, on the said first day of January, eighteen hundred and ninety-seven, in the said eastern division of the southern district of Georgia, then and there unlawfully, knowingly and feloniously amongst themselves and with said divers other persons unknown, did band, conspire, confederate and agree together aforesaid, to defraud the United States of said divers large sums of money hereinbefore mentioned by means of applying said fraudulent scheme in and to the execution and completion of the work under said contracts so made on the eighth day of October, eighteen hundred and ninety-six, as aforesaid, and in the obtaining of the money for the fraudulent accounts which should be rendered under said contracts to said Oberlin M. Carter, as such engineer officer as aforesaid and generally to carry said fraudulent scheme into execution in the obtaining of all contracts of like character which might thereafter be let in said Savannah district by the United States through the said Oberlin M. Carter, as such engineer officer, con-

trary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

And it having been satisfactorily proven to me that the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor are now within the southern district of New York,

Now, therefore, you are hereby commanded, in the name of the President of the United States of America to apprehend the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, and Edward H. Gaynor and bring their bodies forthwith before me, or some judge or justice of the United States, wherever in the State of New York they may be found, that they may then and there be dealt with according to law for the said offense.

Given under my hand and seal, this thirteenth day of De-
69 cember, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.]

JNO. A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

HENRY L. BURNETT,
U. S. Attorney.

(Endorsed on back.)

Circuit court of the United States, for the southern district of New York. The United States of America *vs.* Benjamin D. Greene, John F. Gaynor, Wm. T. Gaynor, Edward H. Gaynor. Warrant. Henry L. Burnett, U. S. attorney. 3129–3248.

The within-named accused Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor having been arrested and brought before me on the within warrant and the charges in the within warrant contained having been duly explained to each of said accused, and they being duly cautioned and informed of their rights in the matter, say that they demand an examination; and the said accused Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor are hereby committed to the custody of the United States marshal for the southern district of New York, to be brought before me for examination on the 23d day of December, 1899, at 10 o'clock a. m. of said day in default of $20,000 bail as to Benjamin D. Greene and John F. Gaynor and $10,000 bail as to William T. Gaynor and Edward H. Gaynor.

JNO. A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

To William Henkel, Esq., U. S. marshal.

70 Defendants Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor discharged on bail to await examination.

JNO. A. SHIELDS,
U. S. Commissioner.

New York, Dec. 14, 1899.

Attendance and examination adjourned by commissioner to Dec. 30th, 1899, at 10 o'clock a. m.
Dec. 23, 1899.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Jan'y 3, 1900, at 2 o'clock p. m.
Dec. 30, 1899.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Jan'y 4, 1900, at 2 o'clock p. m.
Jan'y 3, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Jan'y 16, 1900, at 10 o'clock a. m.
Jan'y 4, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Jan'y 17, 1900, at 10 o'clock a. m.
Jan'y 16, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Jan'y 18, 1900, at 11 o'clock a. m.
Jan'y 17, 1900.

JNO. A. SHIELDS, *U. S. Com.*

71 Attendance and further examination adjourned to Jan'y 19, 1900, at 10.30 a. m.
Jan'y 18, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Jan'y 24, 1900, at 10.30 o'clock a. m.
Jan'y 19, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Jan'y 25, 1900, at 9½ o'clock a. m.
Jan'y 24, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Jan'y 27th, at 10 o'clock a. m.
Jan'y 25, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Feb'y 1st, 1900, at 2 o'clock p. m.
Jan'y 27th, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Feb'y 2d, 1900, at 1½ o'clock p. m.
Feb'y 1st, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and further examination adjourned to Feb'y 3, 1900, at 10 o'clock a. m.
Feb. 1, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Attendance and examination adjourned to await decision of commissioner on motion to discharge.
Feb'y 3d, 1900.

JNO. A. SHIELDS, *U. S. Com.*

72 The accused Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, having been arrested and brought before me on the annexed warrant, and demanding an examination, and an examination having been had, and it appearing to me from the testimony offered that the identity of the said accused has been proven and that there is probable cause to believe the said accused guilty of the offence in the annexed warrant contained;

The said accused, Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, are hereby committed for trial at the southern district of Georgia, being the district in which the offense charged is alleged to have been committed, and the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor are hereby committed to the custody of the U. S. marshal, for the southern district of New York until a warrant for their removal shall issue by the U. S. district judge for the southern district of New York, or they shall be otherwise dealt with according to law.
New York, February 20, 1900.

JNO. A. SHIELDS,
U. S. Com., S. D. of N. Y.

To Wm. Henkel, U. S. marshal:

The accused Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor discharged on bail.
Feb'y 20, 1900.

ADDISON BROWN,
U. S. Dist. Judge.

After hearing on exceptions and on application for order of removal, ordered that the matter be referred back to the commissioner for taking further competent testimony as offered by either party in accordance with the opinion filed herein.
June 26, 1900.

ADDISON BROWN.

73 EXHIBIT "B." Referred to in Annexed Petition.

UNITED STATES
vs.
BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, Edward H. Gaynor, Michael A. Connally, and Oberlin M. Carter.

Amended complaint for the removal of the defendants Greene, John F. Gaynor, William T. Gaynor, and Edward H. Gaynor to the district court of the United States for the southern district of Georgia.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Clarence S. Houghton, assistant United States attorney, in and for the southern district of New York, being duly sworn, says, on information and belief (in addition to his affidavit heretofore made in the above-entitled case, on the 13th day of December, 1899), that to effect the object of the conspiracy set forth in the first count of the indictment referred to in his said affidavit, the said Michael A. Connally, named in said indictment as one of the conspirators, at and within the said eastern division of the southern district of Georgia, to wit, on the 17th day of March, 1897, did then and there assist the said Oberlin M. Carter, another of the said conspirators, in the preparation of a certain document purporting to be articles of agreement entered into on the said 17th day of March, 1897, between the said Oberlin M. Carter, corps of engineers, U. S. Army, of the first part and the Atlantic Contracting Company, of New York, city of N. Y., of the second part, and which purports to modify the contract entered into by and between the Atlantic Contracting Company and the said Oberlin M. Carter, captain, corps of engineers, for the United States, made on the 8th day of October, A. D. 1896, for work at the entrance of Cumberland sound, Georgia, which contract is mentioned in the said first count of the said indictment, and which
74 document so made on the said 17th day of March, 1897, as aforesaid, purports to be signed by O. M. Carter, captain corps of engineers, U. S. A., and by the Atlantic Contracting Co., John F. Gaynor president, and by William T. Gaynor, secretary, and upon which the name of the said Michael A. Connally appears as a witness, and he the said Michael A. Connally did then and there forge the name of William T. Gaynor, secretary, so purporting to be signed to said document, and he, the said Michael A. Connally, did likewise then and there assist the said Oberlin M. Carter in the preparation of a document purporting to be dated the eighteenth day of March, A. D. 1897, and purporting to be the written consent of Anson M. Bangs and Eugene Hughes to the modified agreement dated March 17, 1897, above described, and he, the said Michael A. Connally, did then and there forge the said signature- of Anson M. Bangs and Eugene Hughes, signed to said document purporting to be such assent to said sureties, and did then and there forge the signatures of James

C. Bogart and Henry Smith, which signatures purport to be signed on said document as witnessing the signatures of said Anson M. Bangs and Eugene Hughes to said document, and that he, the said Oberlin M. Carter, did then and there knowingly cause said forged documents to be then and there forwarded to the War Department of the United States for approval, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. And deponent refers to the second count of the said indictment, where the said overt act is set forth fully and at large, for greater certainty; and deponent moreover refers to the third and fourth counts of the said indictment, and the overt acts therein set forth, and by way of describing the said overt acts and each of them, he adopts the language of the said third and
75 fourth counts in their descriptions of the said overt acts done as therein alleged, in pursuance of the conspiracy set forth in the first count of the said indictment; and he makes them and each of them parts of this affidavit.

And deponent further says, on information and belief that on the first day of July, in the year of our Lord one thousand eight hundred and ninety-seven, within the said eastern division of the southern district of Georgia, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter did then and there unlawfully, knowingly, wilfully and feloniously amongst themselves and with divers other persons to deponent unknown, combine, conspire, confederate and agree together to defraud the Government of the United States by obtaining the allowance and payment by the United States through the said Oberlin M. Carter—he, the said Oberlin M. Carter being then and there a captain in the corps of engineers of the United States Army, and as such captain in the corps of engineers, being then and there engaged in the work of improving for the Government the rivers and harbors of what is usually known as the Savannah district for the improvement of rivers and harbors, and he, the said Oberlin M. Carter being then and there in the military service of the United States and as such captain in the corps of engineers, being then and there a disbursing officer of the United States entrusted with the disbursement of money applicable to such improvements in said Savannah district—of a certain fraudulent claim, and which said fraudulent claim was then and there a claim for labor and material claimed to have been furnished by the Atlantic Contracting Company, a corporation chartered under the laws of the State of West Virginia, under a contract theretofore entered into on the 8th day of October, A. D. 1896, for improving Harbor Savannah, within the State of
76 Georgia, and which contract had been entered into between the said Atlantic Contracting Company and the said Oberlin M. Carter as captain of the corps of engineers of the United States, as aforesaid, and which said fraudulent claim was for the sum of two hundred and thirty thousand seven hundred and forty-nine dollars and ninety cents for work, labor and supplies claimed to have been furnished to the United States by said Atlantic Contract-

ing Company for said work at said harbor during the months of December, 1896, January, 1897, February, 1897, March, 1897, April, 1897, May, 1897, and June, 1897. And deponent further says, on information and belief, that to effect the object of the said conspiracy, the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor Edward H. Gaynor Michael A. Connally and Oberlin M. Carter, afterwards to wit, on the first day of July, 1897, did unlawfully and fraudulently cause to be presented to the said Oberlin M. Carter as such officer then and there in the military service of the United States, as aforesaid, a certain claim against the Government of the United States, they, the said Benjamin D. Green, John F. Gaynor, William T. Gaynor, Edward H. Gaynor, Michael A. Connally and Oberlin M. Carter well knowing that such claim was fraudulent, for the purpose of obtaining the approval and payment of said claim, by the said Oberlin M. Carter as such captain in the corps of engineers of the United States Army in charge of said Savannah district, as aforesaid, and which said fraudulent claim was then and there in the words and figures following, to wit:

"SAVANNAH, GA., *July* 1, 1897.

The United States engineers department to the Atlantic Contracting Company, Dr.

77 To labor and material furnished during the month of February, 1897, under formal written contract dated October 8, 1896, on work of improving the harbor of Savannah, Georgia, as follows:

23,151.66 square yards of mattresses @ $0.95	$21,994.08
1,544.99 cubic yards of fourth-class stone @ $2.75	4,248.72
	$26,242.80
Less 10 per cent. retained	2,624.28
	$23,618.52

Submitted by

THE ATLANTIC CONTRACTING COMPANY,
By EDWARD H. GAYNOR, *Treasurer.*"

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

And deponent bases his belief as to the allegations of this affidavit, upon the certified copy of the said indictment, referred to in his affidavit of December 13, 1899, as aforesaid, and says that the said indictment consists of ten counts; and deponent refers to the same indictment, and each count thereof, for greater certainty, and adopts the same as part of this amended complaint, verily believing the allegations of the said indictment, as to the charges of conspiracy, set forth in the first, sixth, ninth and tenth counts and the allegations of overt acts set forth in the second, third, fourth, fifth, seventh, eighth, ninth and tenth counts thereof to be true. The said indict-

ment, marked Exhibit "A," and a duly certified copy of the
78 bench warrant issued in the said case, Exhibit "B" are attached to deponent's affidavit of Dec. 13, 1899, aforesaid.

CLARENCE S. HOUGHTON.

Sworn before me this 13th day of January, 1900.

JNO. A. SHIELDS, *U. S. Com.*

Endorsed on back as follows:

U. S. commissioner's court, southern district of New York. The United States *versus* Benjamin D. Greene and others. Amended complaint. Henry L. Burnett, United States attorney.

79 EXHIBIT "C." Referred to in the Annexed Petition.

United States District Court, Southern District of New York.

UNITED STATES
against
BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and EDWARD H. Gaynor and Others.

Indictment—Removal—Section 1014 Rev. Stat.

Henry L. Burnett, Marion Erwin, United States district attorneys, and Ernest E. Baldwin, assistant attorney for the United States.

Abram J. Rose and L. Laflin Kellogg, for defendants.

BROWN, *J.:*

The above four defendants, with Michael A. Connally and Oberlin M. Carter, were indicted by the grand jury in the eastern division of the southern district of Georgia on December 8, 1899, for conspiring to defraud the United States under two contracts, one for improving the harbor at Savannah and the other for work in Cumberland sound. Upon an affidavit to this effect by one of the assistants of the United States attorney, referring to a certified copy of the indictment, a warrant was issued by a United States commissioner for this district, under section 1014 of the United States Re-
80 vised Statutes, for the apprehension of the four defendants above named.

The defendant Greene resides at Stamford, Conn.; John F. and W. T. Gaynor in Onondaga county, N. Y., and E. H. Gaynor at Boston, Mass. The defendants, on notice, appeared before the commissioner and demanded an examination, and proceedings thereon were from time to time had before the commissioner, who, upon finding probable cause that the offences charged had been committed, ordered the commitment of the defendants for trial. An order is now asked for their removal to the eastern district of Georgia for trial.

The stenographer's notes of the proceedings, returned by the commissioner, consisted of about 1,100 pages, showing, however, no other evidence of the commission of the offence than a certified copy of the indictment. Some evidence was given as to the identity of

the defendants as the persons charged, and this was not seriously contested. Aside from this and the arguments of counsel, the whole record consists of little except rulings upon the evidence on behalf of the defendants sought to be introduced, and numerous exhibits, all of which, so far as they pertained to the merits or tended to show the innocence of the accused and the want of probable cause, were rejected, mostly on the ground that the question of guilt or innocence should only be heard and determined upon a trial under the indictment.

81 Upon this record the defendants object to any order of removal on the ground,

First. That the indictment is bad upon its face.

Second. That it was not properly proved, since neither was the original indictment produced, nor was the copy, though certified by the deputy clerk, duly authenticated as an exemplified copy.

Third. That by reason of its vagueness, its lack of specification of facts and circumstances, and its inconsistencies and contradictions in different parts it is insufficient evidence of probable cause of guilt.

Fourth. That evidence was improperly rejected tending to show that the grand jury was illegally drawn and constituted, and the indictment, therefore, void. And

Fifth. That the defendants were virtually denied a hearing by the rejection of all evidence tending to show their innocence.

As respects procedure the present case is identical with that of *In re* Dana, (68 Fed., 886), in which this court upon careful consideration pointed out the course necessary to be pursued in cases of this character under section 1014 of the United States Revised Statutes, and under the law of this State thereby virtually adopted.

The views there expressed seem to have been approved by Lacombe, J., in Price's case (83 Fed., 830; 84 Fed., 636; affirmed 85 Fed., 84, 87), where the course indicated in the Dana case was followed

82 by the examination of several witnesses to show probable cause, as well as the production of an exemplified copy of the indictment. It was also approved in the case of *In re* Wood (95 Fed., 288), and so far as I am aware it has not been disapproved in any subsequent reported case.

In view of these decisions which were repeatedly called to the commissioner's attention, I find it difficult to understand the disregard of them in the rejection of the great mass of competent evidence and exhibits offered in the defendant's behalf. In that decision it was pointed out that the proceeding for commitment and removal under section 1014 is an original proceeding, to be conducted according to the laws of the State in similar proceedings before committing magistrates; that the object of the proceeding is to enable the commissioner to ascertain for himself whether from the proof of facts and circumstances produced before him, there is probable cause to believe the defendants guilty of the offence charged; that the mode of proceeding in such cases is precisely the same whether there is an indictment or no indictment (see also

Price *v.* McCarthy, 89 Fed., 84, per Wallace, C. J.); and that an indictment, when offered by the prosecution, is at best but evidence, in no way conclusive, and in truth is but secondary evidence (which to a certain extent is admissible on such examinations), and that although the copy of an indictment may be treated as an affidavit,

83 it is, nevertheless, to be judged by the same rules as other affidavits, and given weight only according to the nature and character of its averments and the facts and circumstances which it sets forth, if any, in a manner sufficient to warrant the conclusion of probable cause to believe the accused guilty.

By a singular inversion, however, the best reason for the admission of the defendants' proposed evidence, namely, its tendency to show innocence of the charge and the lack of probable cause, was in this instance made the reason for excluding it. A certified copy of the indictment having been received by the commissioner, it was thereupon contended by the prosecution, and virtually ruled by the commissioner, that the evidence was closed as respects the question of guilt, and that no evidence disproving it could be allowed, since that would be "trying the issue" here instead of in Georgia. Thus, although the right to show want of probable cause was admitted in form it was in substance denied; since whatever would disprove the alleged offence was for that very reason excluded.

Precisely opposite was the ruling of this court in the Dana case, where it was shown, as I have said, that by section 1014 (the sole authority in the Federal courts for commitment or removal in such cases) the proceeding before commissioners must be in conformity with the existing State procedure. Mr. Justice Curtis, in United States *v.* Rundlett, (2 Curtis, 41), says:

84 "My opinion is that it was the intention of Congress by these words to assimilate all proceedings for holding accused persons to answer before a court of the United States to proceedings had for similar purposes by the laws of the State where the proceedings should take place * * * the prisoner is not only to be arrested and imprisoned but bailed agreeable to the usual mode of process in the State."

See also U. S. *v.* Horton's Securities, 2 Dillon, 94.

Mr. Justice Miller and other eminent judges have confirmed this interpretation.

See *in re* Dana, 86 Fed., 893–894, and cases *ante*.

In States, therefore, where the accused has no right to examine witnesses on his own behalf before a committing magistrate he cannot do so in proceedings under section 1014; but in other States, as in New York, where this right does exist and is in daily practice, it cannot be lawfully denied him.

In New York the right of the accused to produce witnesses on his own behalf before committing magistrates was confirmed by express statute more than seventy years ago; and more than forty years before the enactment of section 1014 of the United States Revised Statutes; and such is the uniform course of procedure. The New York Revised Statutes (1828) declare (vol. 2, p. 708):

"After the examination of the prisoner is completed, his wit-

nesses, if he shall have any, shall be sworn and examined, and he may have the assistance of counsel in such examination."

85 This practice is ancient.

Dallon's Jus. (1742), ch. 165; 1 Chit. Cr. L., 79.

The existence of an indictment in another jurisdiction has no bearing upon the application of this statute to proceedings for commitment, or to the course of the examination when an examination is demanded pursuant to the statute, nor upon the commissioner's duty to take whatever competent evidence is offered by the defendant tending to show the want of probable cause, and for that purpose and to that extent the proceeding is, of necessity, like the proceedings before the State magistrates, a partial preliminary hearing on the merits.

It is urged that under section 1014 the similitude to State proceedings may be preserved by treating a Federal indictment from another district as a State indictment found in one county is treated in another county wherein the defendant is arrested.

That analogy, however, could only be followed by the endorsement of a bench warrant from the Federal district where the indictment was had by the judge of the district where the accused might be found. But that practice, if ever in use, has been long since abandoned. Besides the authorities opposed to it cited in the Dana case (68 Fed., 893–894), it was again disapproved by Lacombe, J., in the late case of Price (83 Fed., 830), as oppressive and un-

86 authorized. Section 1014 moreover, plainly contemplates the examination of witnesses and provides for a return of the "recognizances" for their appearance to testify in the case. In proceeding under that statute, therefore, the commissioner must receive all evidence touching probable cause of guilt that a State committing magistrate would be bound to take, without reference to any subsequent trial upon indictment.

The objection that this would be "trying the issue" is premature. There is no "issue" as respects the indictment until the defendants are committed, removed and arraigned and plead not guilty. The inquiry before the commissioner is for the very purpose of ascertaining whether there is sufficient ground to commit and remove the accused and oblige him to plead and stand trial, and to enable him under the State statute to arrest the proceedings *in limine*, if he can, by proving that there is no probable cause for the accusation. That was the only "issue" before the commissioner on this hearing.

In New York the statute above cited has been followed in the Code of Criminal Procedure by still further provisions designed to safeguard accused persons, from arbitrary, mistaken or malicious commitments. (188–214.) And in the absence of some act of Congress expressly dispensing with any other evidence than the indictment itself, as in extradition proceedings, it is impossible that in a proceeding under section 1014 which makes applicable the State laws, the rights of citizens expressly guarded by the State

87 laws can be set aside by a mere indictment in a distant jurisdiction, so that without a word in their own defense citizens

could be thereupon *be* transported for trial hundreds or even thousands of miles away from their homes, in contravention of the act of Congress and the laws of the States, which it recognizes and adopts. Such a proceeding would be not merely erroneous, but illegal.

The extradition cases cited on the argument, whether interstate or international, are wholly inapplicable. Both those proceedings are regulated by wholly different statutes or by treaty stipulations. In interstate extradition the acts of Congress as well as the State statutes exclude altogether any inquiry into the guilt or innocence of the accused, the only conditions of the statutory obligation of the executive to return the accused being, first, that there is an indictment or information against him (of which an exemplified copy is sufficient evidence, N. Y. Crim. Code, 827, 829), and, second, that the accused is a fugitive from justice (U. S. Rev. Stat., 5278), *In re* Leary (10 Ben., 197).

It is unnecessary to consider the questions arising on the exclusion of the evidence touching the alleged illegality in the drawing of the Georgia grand jury or to discuss at much length either the sufficiency of the very complicated indictment as a pleading, or its force and weight as evidence. As explained in the Dana case, those two questions are altogether distinct, and while I have
88 some doubt, but do not need to pass, on the question of the sufficiency of the indictment as a pleading, I have no doubt that viewed as an affidavit, it is insufficient in its statement of facts and circumstances to justify a removal when, as in this case, an examination has been demanded by the accused and its sufficiency challenged. Witnesses for the prosecution having at least some knowledge of the facts, were in attendance before the commissioner, but were not examined as to the offence, nor were they allowed to testify for the defendants on cross-examination, so that the facts and circumstances on which the magistrate should form his judgment have not in fact been made known. I add some observations on the indictment as a pleading and as evidence.

2. The gist of the offence of conspiracy is in the illegal combination and intent, and the statute of limitations begins to run from the time the conspiracy is formed. The crime may be complete though the intent was never accomplished. And though the statute offence requires an overt act "to be done by one or more of the parties to the conspiracy," or some act "to effect its object," yet this act, as in the common-law offence of conspiracy, is not regarded as an essential part of the offense itself, the statutory provisions being construed as requiring such an act to be proved as a condition of conviction in order to give to the defendants a *locus penitentio* (U. S. *v.* Britton, 108 U. S., 199). It is held to be sufficient, therefore,
89 if the overt act is so described as to apprise the defendant what act is intended to be given in evidence as tending to show that the unlawful agreement was put in operation.

U. S. *v.* Donan, 11 Blatch., 168.
U. S. *v.* Boyden, 1 Low., 266.
U. S. *v.* Sanche, 7 Fed., 715.
U. S. *v.* Bonson, 70 Fed., 591.

In the first and principal count the indictment states, in effect, two conspiracies to defraud the United States. The first, not directly charged as a conspiracy, but called a "fraudulent scheme" and set forth by way of inducement, it is alleged to have been formed on or about January 1, 1891, and to have been thereafter "in continuous process of execution until October 1, 1897." As an original conspiracy this was evidently outlawed before the indictment was found in December, 1899. The second conspiracy and the one relied on, is an alleged conspiracy formed January 1, 1897, to defraud the United States "by applying the previous 'fraudulent scheme' to the execution of two contracts previously obtained, it is alleged, by means of said fraudulent scheme on October 6, 1896;" and counts 2, 3, 4 and 5 state certain alleged overt acts done to carry this new conspiracy into effect. These averments of overt acts, however, cannot be resorted to in order to aid any defective averments
90 as to the conspiracy itself or as to the means by which it was to be accomplished, which in this case were necessary to be set forth.

As the original fraudulent scheme of conspiracy is alleged to have been in continuous process of execution from January 1891 to October 1897, and therefore included the two contracts of October 8, 1896, (the only subjects in the indictment), it is evident that the averment of a new conspiracy on January 1, 1897, to apply the old conspiracy to the execution of the contracts obtained by means of the former one (at the time excluded by the statute of limitations) and already in course of execution, is only a pleader's device to avoid the effect of the statute of limitations as against the original fraudulent scheme. But as each new overt act in furtherance of the common purpose becomes in law a new conspiracy, the time of the conspiracy may be laid within the period of the statute of limitations, if the overt act was within that period, the prior combination, if established, and the later overt act being evidence from which a jury may infer the new conspiracy.

People *v.* Mather, 9 Wend., 229.

Com. *v.* Bartilon, 85 Penn. St., 482–489.

I have considerable doubt, however, whether the averment-
91 of the means by which the conspiracy of January 1, 1897, was to be effected are indicated with such definiteness, clearness and certainty as seems to be required. See 4 Encycl. of Plead., 722.) In Commonwealth *v.* Hunt (4 Metcalf, 111), in which this subject is fully discussed, Shaw, Ch. J., says, p. 125:

Conspiracy is an offence which especially demands the application of that wise and humane rule of the common law that an indictment shall state, with as much certainty as the nature of the case will admit the facts which constitute the crime intended to be charged. This is required to enable the defendant to meet the charge and prepare for his defence, and in case of acquittal or conviction, to show by the record the identify of the charge, so that he may not be indicted a second time for the same offence. * * * This fundamental rule is confirmed by the declaration of rights, which

declares that no subject shall be held to answer for any crime or offence until the same is fully and plainly substantially, and formally described to him. * * * If the criminality of the offence which is intended to be charged consists in the agreement to compass or promote some purpose, not of itself criminal or unlawful, by the use of fraud, force, falsehood, or other criminal or unlawful means, such intended use of fraud, force, falsehood, or other criminal or unlawful means must be set out in the indictment.

In the prior case of Lambert *v.* The People (9 Cowen, 578), it was also held upon elaborate consideration by Marcy, J., that—

Where in an indictment for conspiracy the object of the conspiracy is not a legal crime, the means intended to be used must be particularly set forth and show that those means are criminal.

This doctrine has been repeatedly enforced in the decisions of the Supreme Court.

U. S. *v.* Cruikshank, 92 U. S., 542–558.
United States *v.* Britton, 108 U. S., 199.
92 U. S. *v.* Carll, 105 U. S., 611.
U. S. *v.* Hess, 124 U. S., 483.
Pettibone *v.* U. S., 148 U. S., 197.
Blitz *v.* U. S., 153 U. S., 308–315.
State *v.* Parker, 43 N. H., 83.

Now, the only means stated by which the alleged conspiracy of January 1, 1897, was to be carried out is by "applying" the prior "fraudulent scheme to the execution and completion of work under the contracts of October 8, 1896, and in obtaining the money in fraudulent accounts which should be rendered thereunder." But of the fifteen or twenty devices which it is alleged that scheme "contemplated" three-fourths relate to the terms, specifications, and letting out of the contracts themselves, so that most of the scheme could not possibly be "applied" to a conspiracy formed on January 1, 1897, several months after the contracts were let out. Of the remaining means or devices what ones are meant to be charged is left wholly undefined. This is all the more vague and uncertain since even the original fraudulent scheme itself is only alleged to
93 have contemplated that the conspirators "would use some one or more or all of said means and devices and such additional devices as might become necessary." This is certainly very vague and uncertain as to the means used.

The overt act charged in the second count is irrelevant, since it does not appear to be in any way connected with the conspiracy alleged, nor within any one of the means or devices set forth in the conspiracy count. The overt acts charged in counts 3, 4 and 5 are the presentment of alleged "fraudulent claims" to Captain Carter of the corps of engineers, without any statement how or wherein they were fraudulent. The items of the claims are given, dated July 1, 1897, apparently verbatim, for work and material furnished under the contract of October 8, 1896. It would be naturally inferred that the charge intended was that these bills were in some way false and not according to the contract; that is, that the work done and

the materials supplied were less than was claimed, or that they were of inferior qualify, or in some way different from the contract, or that the price was incorrect.

But there is no such averment as respects any of the bills referred to in any of the counts; nor is it stated that any one of them is false, while from other passages in the indictment, as well as from the observations of counsel in the stenographer's report of the proceedings, it would seem that the supposed fraudulent character of
94 the bills was not founded upon anything incorrect in them or in the work, but upon the alleged fraudulent devices contemplated in the preparation and letting of the contracts themselves, no single one of which devices is, however, definitely alleged to have been really employed. Such averments not only do not reasonably apprise the defendants of the nature of the charges they must meet but are calculated to mislead them. This applies to all the counts except the second. The conspiracy charged in the sixth count relates wholly to future contracts to be let thereafter, *i. e.*, after January 1, 1897, while the overt acts stated in counts seven and eight relate wholly to the prior contracts of October 8, 1896. On this additional ground, counts 6, 7 and 8 would seem to be necessarily bad.

Counts 9 and 10 alleged conspiracies on July 1, 1897, as respects the same contracts and bills referred to under the conspiracy of January 1, 1897, in counts 1 to 5. As the presentment of false or fraudulent bills for payment to a Government officer is itself a criminal offense (sec. 5238, Rev. Stat.), I should regard these counts as good had the nature of the fraud been sufficiently indicated.

3. Without passing definitely upon these objections to the indictment as a pleading, they are much more important when the indictment is offered as evidence of the facts and circumstances
95 upon which a magistrate, after examination demanded, is called upon to find probable cause of guilt. Mere defects in pleading might be disregarded if a crime was otherwise sufficiently shown to have been committed, since commitment and removal may in proper cases be made without any prior indictment.

In re Price, 89 Fed. Rep., 94.

But when there is no evidence of guilt except such — a copy of the indictment itself, considered as an affidavit, affords, there is nothing to cure its defects or its failure to give a consistent, clear and satisfactory statement of the evidential facts on which the conclusion of probable cause may be based.

The mere fact that indictment has been found in another jurisdiction, without producing it, is no evidence of probable cause before a committing magistrate; and a mere affidavit oo that fact will not only justify even the issuing of the warrant of arrest.

Ex parte Solomon, 1 Abb. N. S., 347,

Ex parte Leland, 7 Abb. N. S., 64.

It is only the facts and circumstances stated in the indictment, if any such are properly stated, that are of any value as evidence, and

these statements are to be judged and weighed according to what they may be worth.

96 The present indictment, even more than that in the Dana case, shows that it was drawn and designed as a pleading only, and not as a statement of the facts from which a judicial finding of probable guilt might reasonably be drawn.

(1.) Its statement of two separate conspiracies with reference to the same two contracts of October 8th 1896, viz: on *on* January 1, 1897, and another on July 1, 1897, and both upon the same overt acts, since it appears that all of the seven months' bills were presented for allowance together and at the same time, on July 1, 1896, is most improbable as a fact though allowable as a pleading both being evident-ally adopted, as I have said, to avoid the statute of limitations, which would be applicable to a charge of conspiracy based upon either the original scheme or the contracts of 1896.

(2.) The inconsistency in the first count and its consequent vagueness are manifested in alleging that on January 1, 1897, there was a conspiracy to apply the prior "fraudulent scheme" as a whole to past contracts when most of the particulars of that alleged scheme could not possibly be thereafter applied to them; and of the rest there is no definite statement of what devices were to be applied, or that any one was, in fact, applied.

(3.) The mere statement of the presentment of "fraudulent claims" without any indication how or wherein they were fraudulent, which is the basis of all the counts, except the second, is not a proper

97 or sufficient statement of any facts or circumstances on which a judicial judgment of probable cause can be based; it would not be sufficient for an arrest, even in a petty civil case.

(4.) There is no allegation anywhere in the indictment that the work and materials supplied and the bills presented were not strictly according to contract, that the prices claimed or allowed were exorbitant, that improper work was passed or improper substitutions made, nor are any facts stated showing actual fraud or that the Government has been defrauded of a dollar. Even if no fuller statement on these points is essential as a matter of pleading, it is indispensable as evidence of probable cause of guilt that some such actual fraud in the overt acts should be shown on the hearing as upon the trial in order to prove that these acts were in truth in pursuance of the alleged conspiracy and were not done in an honest fulfillment of the contracts referred to, as the defendants had a right to do within the *locus penitentio* which the statute allows.

In most cases, however, the fraudulent or criminal character of the overt acts is the chief if not the only evidence of the unlawful conspiracy (Com. *v.* Bartilson 85 Penn. St., 482; 2 Wharton Cr. L., 246). The indictment being the only evidence of guilt that is presented, some facts showing fraud in the overt acts are as necessary to appear there as they would be necessary to be proved at the

98 trial. In this indictment there are charges of fraud and of "fraudulent claims" but not a fact or circumstance is stated from which a magistrate or judge could rightfully find actual fraud or probable cause for forming such a judgment. The indictment

in other words is purely a charge, a pleading for the purpose of putting the defendants on trial without any evidential facts from which fraud or conspiracy can be judicially inferred.

(5.) The failure of the prosecution to examine the Government witnesses present, Captain Gillette among others, in reference to the offence itself, and the persistent objection to any cross-examination of these same witnesses and to the defendants' examination of others having knowledge of the facts, resulting in the exclusion of all testimony as to the probable guilt of the accused, which is the principal object of such examinations, together with the circumstances above stated, show that the withholding of all evidential facts, both in the indictment and before the commissioner, was designed in consequence of a misapprehension of the proper course of procedure under section 1014 in connection with the statutes of this State and the ordinary practice thereunder.

I know nothing of the probable guilt or innocence of the accused, except from the record before me. Considerable evidence which was offered and under the law should have been received, indicates innocence as far as it goes. Opposed to this is the Georgia indictment alone, which, on examination, proves to be a bare pleading barren of any such statement of facts and circumstances as to warrant any judicial finding of probable fraud. Of the eight over- acts alleged, two of the principal ones, viz., the issuing of two checks for the whole work referred to under both contracts of October 8th, 1896, were done in New York, where the offence, if any, was therefore equally triable (4 Ency. Pl. and Pr., 706; People *v.* Mather, 4 Wend., 229; Com. *v.* Bartilson, *supra*). The accused, even if guilty, though triable in Georgia also, can only be removed to that jurisdiction by proceedings regularly conducted according to law. To order their removal otherwise would be an illegal act and scarcely distinguishable from virtual abduction under the forms of law.

99

For the above reasons the application should be denied and the defendants discharged, without prejudice to such other proceedings as may be advised.

April 4, 1900.

100 EXHIBIT "D." Referred to in Annexed Petition.

United States District Court, Southern District of New York.

THE UNITED STATES
vs.
BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and EDWARD H. Gaynor and O'rs.

The above-named defendants having appeared before me in custody of the United States marshal under a commitment from John A. Shields, United States commissioner for the southern district of New York, to await a warrant of removal to the eastern division of the southern district of Georgia, and having given bail for their ap-

pearance before me from time to time and to surrender themselves to the United States marshal, when required and abide the order of this court and not depart without leave; and Henry L. Burnett, United States attorney for the southern district of New York, and Marion Erwin, United States attorney for the southern district of Georgia, having moved for a warrant to remove the defendants from the southern district of New York to the eastern division of the southern district of Georgia, and the defendants having objected to the issuance of such warrant;

And after hearing Henry L. Burnett, Marion Erwin, United States attorneys, and Ernest E. Baldwin, assistant United States attorney, in favor of said motion, and Abram J. Rose and L. Laflin Kellogg, of counsel for the defendants, in opposition thereto;

101 And the motion for the warrant of removal upon the record as it now stands having been denied, and the matter sent back to the commissioner for further competent testimony offered by either side in accordance with the opinion rendered herein;

It is ordered that the defendants attend before John A. Shields, commissioner, at his rooms in the post-office building, on July 6th, 1900, at 2 o'clock p. m., and the defendants and each of them are required to be present at that time on such proceeding.

Dated New York, June 26th, 1900.

ADDISON BROWN.

(Endorsed on back as follows:)

U. S. district court, southern district of New York. The United States *versus* Benjamin D. Greene and others. Order denying motion for warrant of removal and sending the matter back for further testimony. Henry L. Burnett, United States attorney.

102 EXHIBIT "E." Referred to in the Annexed Petition.

United States District Court, Southern District of New York.

UNITED STATES
against
BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and EDWARD H. GAYNOR and Others.

Removal proceedings, section —, U. S. Rev. Stat.

Marion Erwin, assistant, U. S. attorney for the Government.
Kellogg & Rose for respondents.

BROWN, *J.*:

Since this matter was previously before me (100 Fed. 941) a large amount of testimony pro and con has been taken by the commissioner on the question as to probable cause of the commission of the offence charged, as well as proof also concerning alleged irregularities, which it is contended vitiated the indictment upon which the removal of the defendants is sought.

The facts as respect the latter objection are briefly as follows:

The offences charged being in the eastern division of the southern district of Georgia, the grand jury was necessarily impanelled and the indictment found in that division. The drawing of the names of jurors for venire was done at Macon in the western divis-
103 ion. Prior to the drawing of the names the judge of the district, pursuant to section 802 of the United States Revised Statutes, for the purpose of securing a jury "the most favorable to an impartial trial and so as not to incur any unnecessary expense," directed.

"That the jurors be returned from the counties of said eastern division other than the counties of Chatham and Glyn."

So that the jurors from Chatham and Glyn counties, in which Savannah and Brunswick are situated were excluded from consideration although their names were not removed from the box before drawing.

Names were then drawn from the box, and as they were drawn, all such names as were from those two counties were laid aside, and the venire was made up from the others drawn. Afterwards the latter jurors, as thus drawn, were summoned to appear at Savannah within the eastern division and from them the grand jury was selected and sworn.

The whole number in the jury-box for the eastern division when last revised in 1897 was 562, of which 305 were from Chatham and Glyn counties. From these 197 had been drawn out for several prior juries. But even supposing that the names of all those who were previously drawn out had been put back, the whole number of jurors in the box, excluding those from Chatham and Glyn
104 counties, would be but 257. Section 2 of ch. 52 of the act of June 30, 1879 (Sup. Rev. St. p. 270) requires, however,

"That all such jurors * * * shall be publicly drawn from a box containing at the time of this drawing the names of not less than three hundred persons the qualifications prescribed in sec. 800 of the Revised Statutes," &c.

It is contended for the defendants that by the order of the judge excluding all jurors from Chatham and Glyn counties, there remained in the box at the time of this venire at most but 257 competent jurors, instead of 300, as required by the above act, because by force of the judge's order the jurors became incompetent for this venire; and that the legal force and effect of the order were the same as if the names of the Chatham and Glyn county jurors had been actually withdrawn from the box before the drawing commenced.

I have no doubt that the requirements of the act of 1879 are mandatory, and that any substantial departure from its provisions will invalidate the subsequent proceedings if due objection is seasonably raised. But even if the judge's order was equivalent to a withdrawal from the jury-box of the names of the jurors from Chatham and Glyn counties, as the defendants contend (which is itself a question so that in legal effect only 257 names remained in the box when the jury was drawn), there are still two sufficient reasons why this

objection should not prevent a removal of the accused for trial, if a case for removal is otherwise made out. (*a.*) Because the question is a new one arising upon the construction and effect of an im-
105 portant statute, and not decided or in any way passed upon by the Supreme Court as the ultimate authority. Any decision in defendants' favor in this proceeding could not be reviewed or corrected if erroneous in the ordinary mode of review, and justice would by such an erroneous ruling be defeated; whereas by leaving the question for the trial court, this objection will continue to be equally available to the defendants there, and any decision thereon adverse to the defendants, if erroneous, can be corrected in the regular course of appeal. It is only where there can be no reasonable doubt concerning the invalidity alleged that removal should on such grounds be refused.

(*b.*) Under the ruling of the Supreme Court in the case of Agnew *vs.* U. S. (165 U. S., 36) there is at least some question whether the objection to the grand jury has not been waived. The general rule is that such objections should be taken at the first opportunity, and unless so taken are waived. I had supposed, indeed, that the time when the accused was arraigned and called on to plead, was regarded as the first opportunity and in time; but in the above case the accused was held to have waived the objection because being within the district he had not before arraignment come into court and moved to set aside the proceedings. This question like the last must be referred to the trial court.

Of the same nature is the further objection that the grand
106 jury were drawn in the western division of the district instead of the eastern division as is incorrectly stated on the face of the indictment. So far as I know, it has never been adjudged, nor is it clear to me that the drawing as proved is such an irregularity, if it be an irregularity, as to make void the subsequent proceedings under the act of January 29, 1880 (1st Sup. Rev. St. 277) dividing the southern district of Georgia into the eastern and western divisions. That act has no specific directions on this point; and the place of drawing, if within the district, seems immaterial and this objection, as well as that relating to the mode of putting the names into the box, should be refered to the trial court.

Probable cause.—Upon a large amount of testimony taken under the order referring the matter back to the commissioner, he has committed the defendants for trial by order of March 21, 1901, in which he states that

"After full and fair examination touching the charge in the annexed warrant named, it appears from the testimony offered that there is probable cause to believe the defendants guilty of the charges therein contained."

Upon the question of the existence of probable cause to believe that an offence has been committed, the rule as respects any review of the commissioner's finding, is the same whether the question arises upon an application for removal to another district under section 1014 or upon *habeas corpus* and certiorari or an appeal therefrom

in cases of international extradition. In all such cases the
107 question upon review never is whether the proof was such as would be required to convict the accused upon a trial by jury; but only as to the existence of any legal evidence before the commissioner upon which he might find that there was reasonable cause to believe that the crime has been committed. In the case of Bryant *vs.* U. S., 167 U. S., 104, the question in the opinion of Mr. Justice Brown is stated to be,

"Whether there was any legal evidence at all upon which the commissioner could decide that there was evidence sufficient to justify his commitment for extradition; or, as stated in Ornelas *vs.* Ruiz, 161 U. S., 502, 508, 'if the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offence charged is within the terms of the treaty of extradition, and the magistrate in arriving at a decision to hold the accused has before him competent legal evidence on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused for the purposes of extradition, such decision cannot be reviewed on *habeas corpus*.'"

In the prior case of Oteiza 136 U. S., 330, 334, the Supreme Court by Mr. Justice Blatchford says:

"If the commissioner has jurisdiction of the subject-matter * * * and the commissioner, in arriving at a decision to hold the accused, has before him competent legal evidence on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused, for the purposes of extradition, such decision of the commissioner cannot be reviewed by a circuit court or by this court, on *habeas corpus*, either originally or by appeal."

The commitment by the commissioner and his finding of probable cause have been made after an extremely full hearing of all the evidence offered on both sides. No evidence reasonably pertinent has been rejected. Objection is made that irrelevant and incompetent
108 evidence offered by the Government was received by him; but as stated in the former decision, the evidence receivable in such preliminary examinations, is not to be strictly limited by the technical rules applicable upon the final trial; and upon a charge of fraud, or of conspiracy to defraud, a somewhat wide latitude in the testimony is always allowed even on the final hearing, for the purpose of showing the intent. The proof of the charges in this case does not consist of any direct and certain testimony of the commission of the offences charged, but rests upon many facts and circumstances in a long course of dealing, from which it is claimed that the inference of an unlawful intent to defraud the Government must reasonably be inferred; and the bills alleged to be fraudulent in the last counts of the indictment, are claimed to be fraudulent, not so much because they were not according to contract, as because the contracts themselves were fraudulent, and procured through a fraudulent conspiracy with Captain Carter, an employee of the Government. Considering the nature of the case, therefore, I find

no such objections to the testimony admitted by the commissioner as to vitiate his findings or require reconsideration by him.

As respects the finding of probable cause, I have carefully considered the very extended briefs and arguments of counsel, and have examined the voluminous evidence with a view to ascertain whether there was competent evidence before the commis-
109 sioner sufficient in itself to sustain his finding of probable cause. Under the rule above stated, it is not for the judge on an application for removal, to compare different parts of the testimony in order to determine their relative weight, or to substitute his own judgment for that of the commissioner, even though it might on the whole evidence be different. By this, however, I do not mean to be understood as expressing any opinion whatsoever on the merits of the case. The defendants have given a great deal of evidence tending to show that their contracts were fairly obtained, their work well and honestly done, and that the Government has not been defrauded a dollar.

The Government on the other hand has given evidence tending to a contrary conclusion; and it has shown beyond question that Captain Carter, the employee of the Government and the engineer in immediate charge of the work on the Government's behalf, had for several years immediately preceding the contracts referred to in the indictment, received from the contractors continuously through his father-in-law, in many divisions of profits, one-third of the final net proceeds of each contract remaining for division among the chief contractors; and that this one-third amounted in the aggregate to over $700,000. This, it is claimed gives significance and meaning to many other facts in evidence showing a fraudulent and illegal combination between the defendants and Captain Carter to
110 benefit themselves at the expense of the Government, and to procure the allowance and payment of excessive and fraudulent bills by means of contracts fraudulently procured.

A case presenting such circumstances is especially one that should be submitted to a jury trial. Nor need there be any apprehension that an impartial court and jury will not reach essential justice, or that while guarding jealously the honor and interests of the Government, they will not also appreciate the legitimate rights of the defendants, the peculiar difficulties, risks and hazards of such contract work, the excellence and merit of that which is well done, and the rights of the defendants by legitimate business methods to lessen competition and to secure as favorable contracts as they can; and determine fairly whether the contracts in question were fraudulent, or obtained by illegal methods, or by a conspiracy with the engineer in charge to abuse the opportunities of his position in order to despoil the Government and obtain exorbitant prices for their common benefit.

Having found in the previous decision that the 9th and 10th counts of the indictment are good, whatever may be held as to the counts preceding them, the defendants should be ordered to be removed for trial, or to give bail for their due appearance.

May 15, 1901.

111 EXHIBIT "F." Referred to in the Annexed Petition, being all the Testimony and Exhibits on the Jury Question Before Com. Shields in case of U. S. *vs.* Greene *et al.*

JOHN M. BARNES, a witness called on behalf of the defense, being duly sworn, testified as follows:

Examined by Mr. ROSE:

Q. What is your full name?
A. John M. Barnes.
Q. Where do you reside?
A. Macon, Georgia.
Q. What, if any, official position do you hold under the United States Government?
A. I am the United States marshal for the southern district of Georgia.
Q. How long have you been such marshal?
A. Since the 15th of June, 1897.
Q. Were you such marshal on the 27th of November, 1899?
A. I was.
Q. Do you remember being at the city of Savannah at the term of the United States court that opened on the 8th of December, 1899?
A. I was there at the term that opened about that time, on the 4th though I think it was.
Q. The 4th of December?
A. I think it was the 4th.
Q. Who was the presiding judge of the court?
A. Judge Speer.
Q. Were you present when the grand jury were impaneled?
A. Yes.
Q. In Savannah?
A. Yes.
Q. Do you recollect the name of the gentleman who was appointed foreman?
A. His name was Mackey.
Q. What was his full name?
A. I don't recollect his initials; McKey they pronounce it.

112 Q. M-c-K-a-y?
A. Yes.

Mr. ERWIN: I want to make my objection here to the proof of oral testimony of these matters of record there, because Mr. Barnes may or may not get that right. All these things are matters of record, who was foreman of the grand jury, and in fact it is of record in this case in the certified copy of the indictment. Not to be captious at all, but because I do not want the oral testimony here to undertake to vary the solemn records of the court, and because Mr. Barnes may or may not remember correctly.

Mr. ROSE: This, may it please your honor, is simply for the purpose of identifying the particular grand jury; that is all. As to

who was appointed foreman of the grand jury, within this witness's knowledge.

The COMMISSIONER: Of course the records are the best evidence, but if you insist upon it I allow it.

Mr. ROSE: Let me take this witness's testimony and move to strike it out afterwards. I am trying to accommodate the witness.

Mr. ERWIN: We have the certified copy of the indictment here.

Mr. ROSE: It is Thomas S. I think. I am not certain about the S.—McKey, M-c-K-e-y.

The WITNESS: They pronounce it Mackey.

Q. Among the papers in evidence, to cure any uncertainty, has been offered a certified copy of an indictment purporting to
113 have been found at the November term, 1899, by the grand jurors of the United States chosen, selected, impaneled and sworn in and for the eastern division of the southern district of Georgia, which purports to have been filed on December 8th, 1899, and that the foreman of that grand jury was Thomas S. McKey. Do you recollect being present at Savannah at the time a grand jury was impaneled in the early part of December, of which grand jury Mr. McKey was the foreman?

A. I was.

Q. You recall that fact?

A. Yes.

Q. In what division of the southern district is the city of Savannah?

A. Savannah is in the eastern division.

Q. Is the city of Macon in the same division?

A. No; it is in the western division.

Q. Of the southern district?

A. Of the southern district of Georgia.

Q. Did you as marshal, summon, or cause to be summoned, the grand jury that was afterward impaneled in the city of Savannah in December?

A. I did.

Q. Were you present at the time that grand jury was drawn?

A. I was.

Q. Where was it drawn?

A. In the city of Macon.

Q. In the city of Macon?

A. Yes.

Q. On what day?

A. It was the latter part of November; I think on the 22nd of November.

Q. What year?

A. 1899.

Q. Can you give me the time of day, Mr. Barnes?

A. I don't recollect; near noon though, I think.

114 Q. Whereabouts; in what particular part or building?

A. It was in the United States court-room.

Q. In the United States court-room?

A. Court-room.
Q. And that room is in the United States court building there?
A. Yes sir.
Q. In the city of Savannah?
A. In the city of Macon.
Q. Who do you recall as having been present?
A. At the drawing of the jury?
Q. Yes.
A. I positively recall only four persons including the judge and myself.
Q. Name them please?
A. One was Mr. L. M. Erwin, the deputy clerk now present, and the other was the judge's stenographer, J. N. Tally.
Q. You think there were others present, do you?
A. Yes.
Q. But you don't recall them positively?
A. I don't recall them positively.
Q. How long before the actual drawing of the jury took place did you know of it?
A. A few minutes.
Q. A few may mean to different people a different time?
A. Perhaps 10 or 15 minutes.
Q. Do you have a box for the eastern division and a box for the western division. By box I mean jury-box?
A. Yes, sir.
Q. Who holds the keys of the boxes?
A. The marshal holds them; I hold them.
Q. Did you in November hold the keys of all the boxes?
A. Yes.
115 Q. When you went into the court-room on the 22nd of November, about noon, did you take the keys with you?
A. I did.
Q. Of what boxes?
A. Of the boxes for the Savannah division.
Q. Of the box. Was there more than one box for the Savannah division?
A. Only one I think.
Q. Then instead of boxes, you mean box?
A. Yes sir, that is right.
Q. Of the division of which the city of Savannah, is a part, you mean?
A. Yes sir.
Q. The city of Savannah does not alone constitute the whole of the eastern division?
A. No.
Q. Is there more than one box for the eastern division?
A. One grand-jury box for the eastern division.
Q. And is there a court-house in the eastern division; United States court-house?
A. Yes, sir; at Savannah.
Q. And that was the case in 1899?

A. It was.

Q. Prior to that time had you seen the box in the city of Savannah?

A. I could not positively swear, but I suppose I had seen it there a number of times.

Q. When did you last have the keys and use them prior to November, 1899?

A. I don't remember that.

Q. And can you tell me where you used them to open the box prior to November, 1899?

A. At Macon I think.

Q. Not in the city of Savannah?

A. No.

116 Q. After you locked the box on the occasion that you used it, what happened, or did you lock the box on the occasion that it was used prior to November, after a jury had been drawn?

A. Whether I turned the key or not I don't recollect, but the judge supervised it all. The judge sealed it and very probably with his own hand locked it.

Q. And gave you the key?

A. Gave me the key.

Q. Do you remember when that was?

A. No, I do not.

Q. About how long before the last of November?

A. I think about March or April before.

Q. Of 1899?

A. 1899.

Q. Had you seen the box from—assuming it to be March—from that time down until you went into the court-room on the 22nd of November?

A. I think not.

Q. And you don't know where it was or who had possession of it?

A. I do not.

Q. When you went into the court-room on that day was the Savannah box there?

A. It was either there as I entered the room or was brought in within the next three or four minutes.

Q. And what was done with it when it was brought in?

A. The judge opened it.

Q. No; who brought it in?

A. Mr. L. M. Erwin, I think.

Q. He was the clerk?

A. Deputy clerk.

Q. And when he brought it in where did he put it?

A. On the judge's stand before the judge.

117 Q. On the bench in front of the judge?

A. On the bench.

Q. Where was Mr. Tally?

A. Well, in the court-room; I don't recollect exactly when he

entered, but before the drawing commenced he was sitting at the right of the judge.

Q. And where did you stand or sit with reference to the judge?

A. I was standing at the judge's left.

Q. The judge then was between you and Mr. Tally?

A. Yes sir.

Q. All upon the bench?

A. All on the bench.

Q. And where was Mr. Erwin, the clerk?

A. Mr. L. M. Erwin was sitting at his desk to the right, and a little in front of the judge's bench.

Q. To whom, if anybody, did you give the key of the jury-box?

A. At that time do you mean?

Q. On the 22nd of November when you went in?

A. I handed it to the judge.

Q. To Judge Speer?

A. To Judge Speer.

Q. And what did he do with it?

A. Opened the jury-box.

Q. And left the key in the lock?

A. Yes.

Q. What was done then with reference to taking any names from the box, and by whom was it done?

A. The judge and I took them from the box. I don't think any one else; I am reasonably sure.

Q. Who took the first name from the box?

A. The judge.

118 Q. And when it was taken what was done with it?

A. If it was accepted the name and address was called out to the clerk, and the judge laid it, if I remember right, by the box.

Q. What do you mean by "if accepted"?

A. If the juror was impaneled; was drawn.

Q. You mean accepted by the judge?

A. By the judge, yes.

Q. And if rejected by the judge?

A. It was laid down there also I think perhaps in another pile, an inch or two from the ones accepted.

Q. Then after the judge had drawn one or more names from the box and they had been accepted or rejected, as you have stated, did you draw any names from the box?

A. I did.

Q. And what did you do when you drew a name from the box?

A. I passed it to the judge.

Q. And what did he do?

A. He accepted or rejected it, as the case might be.

Q. Now did he not put the rejected names back in the box again as the drawing proceeded, or were rejected names put back after the drawing was completed?

A. I am reasonably sure that they were left out until the drawing was completed.

Q. And then put back inside?

A. And then put back.
Q. Was the name read out when the ticket or ballot was rejected?
A. I think not.
Q. And only yourself and the judge knew who it was,
119 whose name it was that was on the particular ticket that was rejected?
A. I do not see how any one else could have known.
Q. I say it was not announced in any way; it was not read out?
A. No; I think that nothing was said about it, except that it was the wrong county.
Q. But whom it was was not mentioned?
A. I think not.
Q. How many names were drawn in that way?
A. I don't recollect but I would say about 48.
Q. That was 48 names that were accepted?

The COMMISSIONER: Do you mean there were 48 names in the whole?
Mr. ROSE: No; 48 names drawn which were accepted.

A. I think I will change that. I think it was about thirty.
Q. And how many names were drawn that were rejected?
A. I could only guess at that.
Q. Approximate as near as you can now?
A. Perhaps 15 or 20.
Q. How many names were in the box?

Mr. ERWIN: Wait a minute. I move to strike out that answer as guessing; only guessing.
The COMMISSIONER: He cannot guess of course.
Mr. ROSE: I asked him to approximate his best recollection.
120 The COMMISSIONER: Give us your best recollection about it. Guessing won't do.

A. My best recollection is that the number rejected was about two-thirds of the number accepted.
Q. Then on that basis if 30 were accepted, two-thirds of 30 would be 20?
A. Twenty rejected.
Q. Now, Mr. Barnes, how many names were in the box when the drawing began?
A. I don't know.
Q. Did you see them put in originally?
A. I did not.
Q. Do you know how many were in after the drawing was over?
A. I do not.
Q. Were they counted while you were there?
A. No.
Q. Were they counted in your presence before the drawing began?

A. They were not.

Q. Could they have been counted after the previous drawing, which was in March or April, and prior to the opening of the box by the judge, when you gave him the key?

A. I cannot imagine any way in which they could have been.

Q. You had the key?

A. I had the key.

Q. And there was only one key as you understand it?

A. Yes.

Q. And the lock did not bear any evidence of having been tampered with?

A. No.

Q. Therefore are you able to tell how many names there were in the box when the drawing began?

A. I do not know.

Q. Did you have any instructions with reference to the
121 service of these jurors?

A. I was given positive instructions about making an earnest effort to serve them, but nothing peculiar about it that I recall.

Q. From whom did you receive those instructions?

A. The judge.

Q. Let me call your attention to it. Was there any instructions given that the jurors should be notified or requested by the party serving them, not to let it become public that they had been drawn as a grand juror?

A. I don't remember positively.

Q. Will you say there was not such instructions?

A. No, I can't say. I remember hearing something about it, but whether it was just rumor or instructions I don't recollect, because lots of rumors have come in 12 months or 11 months.

The COMMISSIONER: We don't want any rumors.

Mr. ROSE: No.

The WITNESS: I can't recollect whether it was rumors or what.

Q. Did you give any instructions to your deputies that served these?

A. I don't know of anything out of the ordinary instructions; whatever instructions——

Q. If you gave them any instructions would it be printed or in writing?

A. In writing.

Q. Have you looked so that you can tell now whether you did or not give any such instructions?

122 A. I don't remember seeing the letter since that date.

Q. Did you keep copies of the letters that you sent?

A. I think I did.

Q. What are the names of the deputies who served these jurors: give their names and addresses?

A. C. J. White, Savannah; J. P. Cason, Brunswick, and F. E. Dismuke, Thomasville. I think they served them all.

Q. And the notices and a letter was sent to each one of the people for the parties living in their vicinity?

A. By the deputies?

Q. No; you sent the notices to the deputies, didn't you?

A. Yes, sir.

Q. Together with a letter?

A. With a letter, yes.

Q. Will you be kind enough on your return home to send me a copy of the letter in your own handwriting, certified to by you as being a copy of the letter?

A. I have no individual choice or inclination either way. That is, I am perfectly willing individually. I don't know whether it is proper for me to do so.

Q. Well, do you decline to do that, simply as a question of producing you here by a *subpœna duces tecum?*

A. I have expressed my perfect personal willingness to do so.

Q. I ask you personally to send me personally copies of the letter sent to your deputy marshals in reference to the service of these grand jurors drawn in November?

A. I do not know that I am authorized to do so, Mr. Rose. That is the only question with me.

123 Q. Your office is a public office?

A. Yes, sir.

Q. And your letters are public documents?

A. Yes.

Mr. ROSE: Mr. Erwin don't object to it and it is simply to save Mr. Barnes a trip to New York again to produce those letters.

The WITNESS: I think I have answered as fully as I can, that I am perfectly willing as far as I am personally concerned.

Q. Will you do so?

A. I do not know how to answer the question, Mr. Rose, because I do not understand my authority in the matter.

Q. From whom will you ask authority?

A. I don't know whether I should ask the judge or the attorney general.

Q. Well, will you let me know whom you do ask and whether authority has been refused you?

A. No; I would not give any information except on the stand, because I fear it would be improper.

Mr. ROSE: Now I think I am practically through with this witness, but I would like to adjourn the examination pending until tomorrow at half past 10, and I won't keep him so that he cannot go at 1 o'clock, even if I have to subpœna him over again to produce those papers.

Mr. ERWIN: I understand the objections made at the beginning of this testimony of Mr. Barnes is intended to apply to the whole of it, that in so far as he has undertaken to prove the act of a

124 court of record otherwise than by copies of the orders and records themselves, orders made in regard to the drawing of

the jury, what counties they should be drawn from, and the record itself showing the list of jurors who were drawn, and all of those matters being matters of record in a court of record, and being matters of record in this case, that so far as he undertakes to prove them, or attack them collaterally or outside of the court itself, that it is illegal and incompetent evidence; the record of a court of record being the best evidence and being accepted in all of the courts.

The COMMISSIONER: It isn't worth while to argue that, because I sustain the proposition. If you require them to bring the court records here, or certified copies of them, that is all there is of it.

Mr. ROSE: That question need not be argued now.

The COMMISSIONER: Oh, no.

JOHN M. BARNES' direct examination resumed.

By Mr. ROSE:

Q. Mr. Barnes, when did you first come into the physical possession of the key to the grand-jury box for the eastern division of the southern district of Georgia?

A. Immediately after I was appointed marshal I think.

Q. And you gave the date yesterday but I have forgotten it.

A. 15th of June 1897.

125 Q. From that time down to and including the 1st of January, 1900, has that key ever been out of your possession?

A. It has not.

Q. Except at the time when it was used by the judge to open the box?

A. It has not.

Q. And at the times that it was used to open the box by the judge you were always present?

A. I suppose I was. Mr Rose, let me correct this. So far as the physical possession of the key is concerned I have it in a draw- in a safe. The chief deputy could get that key at any time and I may not know of a thing of that kind.

Q. You were always present, Mr. Barnes, at the time the jurors were drawn from this box during your term of office?

A. I think I was always.

Q. About how many times, according to the best of your recollection, have there been grand juries drawn from that box during your term of office up to and including November 29th, 1899?

A. I could not tell with any definiteness, but perhaps five times.

Q. Who was the jury commissioner for the eastern division of the southern district of Georgia during the year 1899?

A. I think it was Edward S. Elliott.

Q. And where did he reside?

A. Savannah.

Q. And was he the jury commissioner prior to that time?

A. I think so, yes.

Q. And during the entire term of your office up to 1900?

A. I knew of no other.

Q. And the clerk of the court was Mr. H. H. King?

126 A. Yes.

Q. Where did he reside?

A. Savannah.

Q. Did you ever have the grand-jury box and the key thereof present at a time when Mr. Elliott, the jury commissioner, and the clerk Mr. King, were present with you?

A. I have no recollection whatever.

Q. That means that you don't remember that you have?

A. No; I don't remember that I ever was with them when I had it.

Q. Were you present at any time when the jury commissioner and the clerk put any names into this grand-jury box?

A. No.

Q. And by this grand-jury box I mean the box from which the jury was drawn on the 22nd of November?

A. I understand you.

Q. And the answer is the same?

A. The same.

Q. Mr. Barnes, what was done with the tickets containing the names of the jurors that were drawn on the 22nd of November 1899; the tickets of the names of those impaneled or accepted and rejected, to use your words of yesterday?

A. Unless I am greatly in error they were put back in the box.

Q. After the completion of the drawing?

A. Yes.

Q. And the box immediately was then locked up.

A. Yes, sir.

A. And taken in possession by the clerk and you took the key?

A. Yes, sir.

127 Cross-examination by Mr. ERWIN:

Q. Mr. Barnes, your principal office is in the city of Macon, is it not?

A. That is the headquarters, yes.

Q. Headquarters for that district?

A. For the district.

Q. It is the place of residence of the district judge also?

A. It is.

Q. Your chief deputy also resides in Macon?

A. Yes.

Q. And the principal records of your office are also kept in Macon?

A. Yes.

Q. It is the place where processes are docketed and sent out for service?

A. Yes sir.

Q. Mr. Barnes, at the time of the drawing of the grand jury on November 22nd 1899, at Macon, for the approaching session of the

court in the eastern division at Savannah, the Macon court was in session; I mean it was an open-court session at Macon?

A. I don't remember; I think it was. I don't know that I quite understand your question.

Q. I mean to say the drawing was in open court at Macon, I say?

A. In what I understand is open court, in the court-room where we were.

Q. Did you have any knowledge of the fact that just immediately preceding the drawing, that there was an order passed specifying, or an order stating the counties of the eastern division from which the jury were to be drawn, leaving out certain counties, Chatham and Glynn?

128 A. I knew that there had been an order or instructions or intimations or something of that sort. In other words I knew we were not expected to draw from those counties, but I had seen no order.

Q. You had not looked at the order?

A. No.

Q. That was no part of your business, what counties they were drawn from?

A. No.

Q. You were not consulted about that part of it at all?

A. No.

Q. You just came into the court-room with the keys and were present at the drawing of the jury in the manner which you have stated?

A. Yes.

Q. Mr. Barnes, it is quite usual in the drawing of a jury for one division when the courts are sitting in one division—say Macon—and are about to proceed to hold a session of court in Savannah, to draw the jury from the jury-box of the division to which the courts are about to go, and to draw it at the place where the courts are sitting, was it not?

Mr. Rose: To that I object on the ground that it is immaterial and improper. That if the drawing was not provided for by law or authorized by law, no custom can make it legal or proper, and the question whether it was usual or not cannot be taken into consideration in determining whether it was legal or proper.

Decision on the objection is reserved.

129 A. Yes.

Q. Your headquarters were at Macon?

A. Yes sir.

Q. Do you remember the fact that there was a revision of the jury-box; that is, a change in names in the box while you were in office by the clerk and the jury commissioner?

A. Which box do you mean?

Q. I say at Macon; the jury-box at Macon?

A. Yes.

Q. Now when that jury-box was revised——

Mr. ROSE: I object to that unless it is specified as to what box he means, there being proof that there is a box for the eastern division and one for the western division.

Q. I am speaking about the western-division box of that court at Macon. There was a revision of that box?

A. A revision of the box at Macon, yes, for Macon

(By Mr. ROSE:)

Q. For the western division?

A. Western division.

Mr. ROSE: Then I object to that as immaterial, as not relating to the box from which the jury in question was drawn.

Decision reserved.

(By Mr. ERWIN:)

Q. Were you present at that time?

A. I was not present.

Q. You were not present when the names were put in the box?

A. I was not.

Q. You were not present when the box was locked?

A. I was not.

130 Q. And that was done by the clerk and jury commissioner, with which you had nothing to do?

A. I don't know who did it. I suppose they did it.

Q. If you were custodian of the key to the box—you or your chief deputy—the key was gotten from you or your chief deputy and they fixed the box, and after revising the list returned the key back. That was the course?

A. That was what I understood was done.

Q. If there was a revision of the box at Savannah, you would not have anything more to do with it than you would have had in the western division, would you?

A. I suppose not.

Q. When the jurors were drawn from the box their names were entered by the clerk on a panel or list, were they not?

A. Yes. You are speaking of when this grand jury was drawn?

Q. Yes.

A. Yes.

Q. As the names were taken out or called out, and the tickets examined by the clerk and entered on a list were they not?

A. I was under the impression that they were simply called out to him. They may have been handed to him.

Q. Don't you know, Mr. Barnes, that the names entered on the lists are always by the clerk examined when they are called out first by the judge; they are handed over to the clerk who compares them to get the spelling right and the initials right when he enters them on the list?

131 A. No. I never had noted that part of it.

Q. You don't state that it was not done in that way?

A. No, I do not.

Redirect examination by Mr. ROSE:

Q. Did you personally ever give the key to the box for the eastern division to the jury commissioner or the clerk, for the purpose of revision, during your time of office?

A. No.

Q. What is the name of your chief deputy?

A. R. D. Locke.

Q. Locke?

A. L-o-c-k-e.

132 LENOIR M. ERWIN, a witness called on behalf of the defense, being duly sworn, testified as follows:

Examined by Mr. ROSE:

Q. Mr. Erwin, where do you reside?

A. Macon, Georgia.

Q. What, if any, official position do you hold under the United States Government?

A. I am deputy clerk of the circuit and district courts of the United States, and United States commissioner for the southern district of Georgia.

Q. Who is the clerk of the district court?

A. H. H. King.

Q. Where does he reside?

A. In Savannah.

Q. From 1897 to the 1st of January 1900, tell me, if you know, who was jury commissioner for the southern district of Georgia?

A. For the eastern division?

Q. For the eastern division of the southern district of Georgia?

A. I remember one jury commissioner, Col. Screven, of Savannah.

Q. What is his first name?

A. I can't recall his initials.

Q. During that time was he jury commissioner?

A. I think he was appointed several years ago, sir. I don't remember.

Q. Do you remember Mr. Elliott having been jury commissioner?

A. I think he was the last.

Q. When did his term of office begin?

A. A year or two ago, sir.

133 Q. Was he the jury commissioner in 1899?

A. I am not sure, sir, but my impression is that he was.

Q. Prior to November 22nd 1899—no, on November 22nd 1899, did you have possession of the grand-jury box for the eastern division of the southern district of Georgia?

A. I had.

Q. Where did you have it?

A. At Macon, Georgia.

Q. In what part or place; whereabouts in Macon, Georgia?

A. I had the grand-jury box in my office at Macon, and also in the United States court-room in the Government building.

Q. That was at different times during that day?
A. Yes, I had the box I think the day before.
Q. Both in the court-room?
A. No sir, in my office.
Q. When did you receive that box?
A. I am not sure, but a day or two before the grand jury was drawn.
Q. Do you recollect the date when the grand jury was drawn?
A. November 22nd 1899.
Q. Mr. Barnes testified that it was about noon. Is that your recollection?
A. My recollection is that it was between 12 and 1 o'clock.
Q. How did you receive the box; from whom?
A. From the clerk at Savannah, sent by express.
Q. Who personally delivered it to you; physically delivered it to you?
A. I do not remember, but I think either I receipted the express deliveryman for the box or Mr. Cecil Morgan the deputy clerk of the circuit court.
134 Q. Receipted for it?
A. Yes.
Q. What express company?
A. Southern Express Company.
Q. That would be about the 20th day of November?
A. It was a day or two before the grand jury was drawn.
Q. How long before that time had you had that box in your possession?
A. I had not had that box in my possession for perhaps nearly a year.
Q. Did you have it in your possession in March or April of 1899?
A. I don't remember, I may have.
Q. Do you recollect whether there was a grand jury drawn in March or April 1899?
A. I cannot recall the fact sir.
Q. When was a grand jury drawn for the eastern division of the southern district of Georgia prior to the one drawn on the 22nd of November 1899?
A. I do not remember, sir. A grand jury may have been drawn at Macon or it may have been drawn in Savannah.
Q. I mean at Macon by you or in your presence?
A. I do not remember, sir.
Q. Had there been one drawn there within the year to your best recollection?
A. I could not state positively, Mr. Rose.
Q. What is your best recollection about it?
Mr. Erwin: Wait a minute. Now he states that he isn't positive about it, and he is not what you would call the resident
135 deputy at Savannah, and therefore he could not be able to testify at all.

Mr. ROSE: I am not asking him about Savannah. I am asking him about Macon.

Mr. KELLOGG: He knows all about that, or ought to.

Mr. ERWIN: Go ahead.

A. I can state this, that on other occasions the grand jury——

Q. No; prior?

A. Yes, on other occasions prior to November 22nd 1899, the grand jury and petit jury was drawn at Macon for Savannah.

Q. And at those times you had the box in your possession?

A. Yes sir.

Q. After the drawing prior to this one of November 1899, the box was locked, was it?

A. It was.

Q. By whom?

A. By the judge, according to my recollection.

Q. And delivered to whom?

A. It was sealed and delivered to me.

Q. And what did you do with it?

A. I sent it back to Savannah.

Q. By express?

A. My recollection is that I sent it back by express.

Q. Were you ever present from 1897 down to the 1st of January 1900, at any time when the jury commissioner and the clerk of the court put any names in the box? I am now referring to the box for the eastern division.

136 A. I was not, sir.

Q. Is there a box for the western division as well as for the eastern division?

A. Yes sir; there are two boxes.

Q. The box for the western division is kept at your office at all times?

A. At my office in Macon.

Q. At all times?

A. At all times. Possibly they may have been sent down to Savannah on one or two occasions and the western-division juries drawn there, but I don't remember anything about them.

Q. How many names were in that box, if you know, when the drawing began on the 22nd of November 1899?

A. I do not know, sir.

Q. Before the drawing began, was there any examination of the box or its contents to ascertain how many names there were in it?

A. No sir; there was not.

Mr. ERWIN: Wait a minute now. I will object to that question because you stated before.

Mr. ROSE: I mean by "before" after you had received it; a day or two before the opening.

A. Not after I received it. Of course I don't know what transpired before that.

Q. Who was present on the 22nd of November 1899, when the grand jury was drawn?

A. Hon. Emory Speer, judge of the district court, Marion Erwin, United States attorney, John M. Barnes, United States mar-
137 shal, J. N. Tally, stenographer, and myself, and the bailiffs of the court.

Q. Who drew the names from the jury-box; whose hand was it?

A. Judge Speer's.

Q. After drawing the names, did you receive the tickets?

A. The judge handed them over to me as he drew them.

Q. As he drew them?

A. Yes.

Q. All of them?

A. Not all of them.

Q. Not all of them?

A. No sir.

Q. How many was drawn and handed over to you?

A. Thirty-five.

Q. What was done with the slips taken from the box after they were handed over to you, of the 35 names selected?

A. My recollection is that I placed them in an envelope and marked them.

Q. Did they go back into the jury-box?

A. They did.

Q. In an envelope?

A. That is my recollection.

Q. The judge did not announce to you, or give to you all the tickets that he drew from the box, did he?

A. He did not.

Q. What was done with those tickets?

A. My impression is, as well as I can recall, that the judge put those tickets back in the box.

Q. Himself?

A. Himself.

Q. Can you tell how many there were of them so put back by him?

A. I do not know, sir. I suppose there must have been 15 or 20, I did not count them.

138 Q. You did not have them in your hand at all?

A. I did not have them in my hand at all.

Q. You did not seem them to read them?

A. I did not see them to read them. I saw him take them out and call them off.

Q. You saw these 15 or 20 taken out by the judge and called?

A. I do not say positively there were 15 or 20.

Q. Well, about 15 or 20.

A. I say I am guessing at it.

Q. They were taken out and called.

A. I don't think the judge called the full name of these slips, but my impression is that he called, as he pulled them out, he called the county.

Q. Called the county without the name of anybody?

A. That is my impression.

Q. And kept them under his control until they went back into the box; did not turn them over to you, at least?

A. He did not.

Q. And you made no list of them?

A. I made no list of them.

Q. And there was no list made there by any one of them?

A. Not that I know of.

Q. Have you in your office rules governing the drawing of juries?

A. We have a compilation prepared by Mr. Cecil Morgan, deputy clerk of the circuit court.

139 Q. Do they cover or include rules governing the drawing of juries; does that compilation cover the rules for the drawing of juries in the district court as well?

A. Yes sir.

Q. And those are the rules under which the juries are drawn in the district court; that compilation is treated there as an authority, isn't it?

A. It has never been revised by the judge.

Q. Well, are the rules correctly set out in here (referring to book)?

A. They are not entirely accurate, sir.

Q. Are the rules in relation to the drawing of juries set out in here?

A. They are set out but not entirely accurate.

Q. So far as they go, I mean. Do you mean they have been amended since 1897?

A. I mean that in one of the rules recorded in that book that there is an order of court—a special order—passed for the revision of the jury-boxes for the eastern division that is incorporated in a rule which was passed many years subsequent to the adoption of that rule.

Q. Is that one of these revisions that you speak of (showing book)?

A. Yes sir; that is one.

Book marked for identification "H 5" S. H. October 17th 1900.

Mr. ERWIN: I object to this line of questioning and any endeavoring to prove a rule of court in the district court by a com-

140 pilation made by the deputy clerk of the circuit court. The only competent way to prove that matter would be by a certified copy of the rule of the court, which is of course entered in the records of the court. I do not make this as a captious objection, but I make it because I know that on the very point that the learned counsel is endeavoring to base this examination, that compilation is wrong and materially wrong.

The COMMISSIONER: Then we will have to have a certified copy of the rules. You say you know they are wrong?

Mr. ROSE: I am going to show the one he refers to in this, may it please your honor, and as I understand it, and have insisted in this case, a certified copy of a paper is not evidence here and cannot be produced before you.

The COMMISSIONER: Then they will have to produce the original that is all.

Mr. ROSE: That is another question.

Mr. KELLOGG: They are not going back on their printed rules of court?

Mr. ROSE: If he says they are correct, I am satisfied.

The WITNESS: In the main they are correct, but in one or two particulars they are incorrect.

Q. The part that you have referred to, with reference to
141 the order about the revision of the jury, reads as follows; in this compilation: "It appearing to the court that there is a necessity for a revision of the jury of this court for the eastern division, it is upon consideration ordered that the jury commissioner and the clerk of this court, conformably to law, shall proceed as soon as may be to revise the jury-list of said court, and for the purpose of convenience and economy in serving said jurors, it is ordered that the jurors be selected from the counties of Chatham, Bryan, Liberty, Ware, Glynn, Wayne, Pierce, Clinch, Lowndes, Brooks, Thomas, Decatur, Effingham and Bullock. January 26, 1897." Is that the part of this compilation which you say is not correct?

A. The order is correct but it is no part of that rule.

Mr. ERWIN: Wait a minute. Did you ever see the original order?

Mr. KELLOGG: We don't wish him to be asked any questions. He is your brother and the clerk there. You can cross-examine.

Mr. ERWIN: It is a preliminary question to undertake to prove——

The COMMISSIONER: I am not allowing them to prove. I have sustained your objection that the original order is the proper one. Now if you consent that a certified copy be put in place of the original that will obviate bringing the original here.

Mr. ERWIN: Let me state my position, may it please your
142 honor. That particular order to which he refers on its face shows that it is no rule. A rule of court is something to mark out a continuous course of action. That purports to be a particular order directing certain officers to do a certain thing at a particular time, which I presume was done, and that order is a correct copy. It was an order made in the eastern division of the district, and the deputy now under examination residing in the western division, two hundred miles away; and they are undertaking to prove that particular rule of court, may it please your honor. It had no business in the compilation as a rule of court, and that compilation is not a compilation made by even the deputy clerk of the court under consideration, and while there may be such an order in Savannah, and probably was a particular order about the revision of the jury-box at a particular time in 1897, it is not a rule of court and cannot be proved a rule of court in that kind of a slack way.

Mr. KELLOGG: This man can say whether he knows about it. This is what they use down South all the time.

Mr. ERWIN: I asked whether he ever saw the order.

The COMMISSIONER: Did you ever see the order?

Q. Did you ever see the original order?

Mr. KELLOGG: The idea that they should reject the rules of their own court.

143 The COMMISSIONER: They don't reject the rules. They are right in their objection that nobody knows whether it is an authentic copy of the rules of court or not. I don't know my own rules. I can say it was done under my direction.

Mr. KELLOGG: That is what you have done right along.

The COMMISSIONER: No; I have not. There may be errors of the printer in there.

Mr. ERWIN: I asked him whether he ever saw the original order.

Mr. KELLOGG: I object to it as interfering with the cross-examination.

The COMMISSIONER: I sustain the objection. Go on.

A. I don't recollect to have seen——

The COMMISSIONER: You are not answering the question now.

Mr. ERWIN: I object to that testimony that is in until it is proved that he has seen the original of which that is a copy.

The COMMISSIONER: Yes: you can bring that out on cross-examination.

(By Mr. ROSE:)

Q. Mr. Erwin, in the compilation marked Exhibit "H 5" of this date for identification, on page 25 is the heading "juries." Following that are what purports to be five rules numbered from

144 80 to 84, inclusive. In No. 80 is this paragraph that I read to you with reference to revising the jury-list, and directing it to be drawn from certain counties. You recall that paragraph, do you?

A. Are you sure it is 80?

Q. Yes. Are you able to say whether this revision correctly contains the rules in relation to juries, except that paragraph, that are in force in the district court?

A. Will you let me look at it?

Q. I will, sir.

(Book shown witness.)

A. There is another order here that appears to be incorrectly incorporated in this compilation, dated April 7th, 1897. That is the order providing for the drawing of the juries for the western division of the southern district. There is no part of rule 80, or numbered 80, in this book.

Q. Now will you answer the question then, with the exception of the two orders that appear at the end of rule 80, one dated January 26th 1897, and the other April 7th 1897, which you say are orders and therefore not part of that rule, are the rest of the rules correct?

A. Yes, sir; I think so.

Mr. ROSE: Now I will offer in evidence those rules numbered 80 to 84 inclusive, except the two orders dated January 26th 1897 and April 7th 1897.

Mr. ERWIN: I desire to cross-examine the witness on that particular order.

The COMMISSIONER: Go ahead.

(By Mr. ERWIN:)

145 Q. This order incorporated under what purports to be rule 80, starting out: "It appearing to the court that there is a necessity for a revision of the jury of this court for the eastern division," &c. dated January 26th 1897, did you ever see that original order?

Mr. ROSE: To that I object, because I have not offered that in evidence. It is not cross-examination. I have offered all the rules identified by the witness excluding that particularly that he is now reading.

Mr. ERWIN: I just want to ask him that.

The COMMISSIONER: Ask him that.

Q. Did you ever see that original order to your knowledge?

A. Not that I can remember, the original order. I presume, however, that there was such an order.

Mr. ERWIN: I am not asking you what you presume and I move to strike out your presumption.

The COMMISSIONER: Strike it out.

Mr. KELLOGG: That is a mode of stating his recollection.

The COMMISSIONER: If it is his recollection it is all right. It don't go physically out anyhow.

Q. You are not the resident deputy at Savannah in the eastern division?

A. I am not.

146 Q. Have you compared the balance of this, of what purports to be rule 80 in this book, have you compared it with the original order in the records of the court?

A. I have not.

Q. You have not?

A. No. Well, I have compared that with an old book that we had. I will say that much.

(By the COMMISSIONER:)

Q. I don't understand what you mean. By an old book of rules you have printed?

A. Yes sir; an old printed rule book. This is a new compilation.

(By Mr. ERWIN:)

Q. Mr. Cecil Morgan is not deputy clerk of the district court?

A. He is not.

(By the COMMISSIONER:)

Q. Under whose direction is that rule made?
A. He got it up on his own motion.

(By Mr. ERWIN:)

Q. Who do you say; who do you mean by "he"?
A. I mean the deputy clerk of the circuit court, Mr. Morgan.
Q. This compilation was not officially approved by the court by any order of which you have any knowledge?
A. Not that I know of.

The COMMISSIONER: I think this can be cured in this way, if Mr. Erwin consents to it. That the witness send us up a certified copy of these rules. There is no use of bringing the originals here if he consents to a certified copy.

Mr. ERWIN: I have no objection to making a statement
147 right now if it is satisfactory to these gentlemen here. I desire to state that in the district court where this indictment is found, that there is a rule passed by the district judge himself of course regulating in general the drawing of the jury, in general times as provided in this rule 80, leaving out these special orders which the court makes from time to time.

The COMMISSIONER: What I do not clearly understand is this. Your point is that orders are not rules?

Mr. ERWIN: Yes.

The COMMISSIONER: I do not see how they got in that book there.

Mr. KELLOGG: It is an order amending a rule.

The COMMISSIONER: Unless it is some order amending the rule.

Mr. KELLOGG: That is just what it is.

Mr. ERWIN: What I want to state in reply to that is, wherein this rule is wrong, because he has incorporated in here particular directions for the doing of a thing, which, when done, ends it. A rule of court, as I understand it, is something to guide the court or lawyers or officers of the court in a certain line of conduct, and of course the district-court rules are subject to modification by the district judge and change, in so far as he is competent to make
148 them; and certain special orders in regard to revising the jury-list in Savannah — 1897 were made. Probably this order of January 26th may have been a special order for the clerk and jury commissioner made at that particular time to revise that box. If it was it was not a rule of court controlling anything but a special order, and the balance of that rule to which Mr. Rose refers here was substantially adopted by the district judge many years ago and has been modified from time to time by special orders in regard to the revision of the boxes and the drawing of jurors at the particular time.

Mr. ROSE: Now, Mr. Commissioner, will the prosecution admit that that rule as contained in this book in relation to juries, numbered 80, leaving out the orders of January 26th 1897, and of April 7th 1897, was the rules adopted by the district court.

Mr. ERWIN: It was a rule adopted by the district court several years prior to that time.

Mr. ROSE: Prior to what time?

Mr. ERWIN: Prior to November 22nd 1899; probably seven or eight years, or ten years or longer, prior to that time.

Mr. ROSE: And in force in 1899?

Mr. ERWIN: And it was in force, except as modified by the special order of the judge made in any particular case and by
149 his special orders in the drawing of jurors at particular times.

Mr. ROSE: Then is this the order originally adopted by the judge and in force at the time of this compilation in 1897, and continued in force to the 1st of January 1899, except as modified by special orders passed or entered by the judge?

Mr. ERWIN: Except as modified by orders of the judge, whether special orders or not.

Mr. ROSE: I don't say special orders. I say except as specially modified.

Mr. ERWIN: Yes, I think so. The part of the rule to which you refer was originally adopted by the Hon. John Erskine, the district judge, in 1880. That is my recollection of the matter. I mean that part of the rule in regard to the manner of the drawing of the juries.

Mr. ROSE: All prior to those two orders, as appears in this book.

Mr. ERWIN: Yes. It has been in general carried out up to this time, and up to the present time in regard to the drawing of the juries.

Mr. ROSE: All right. Now that is admitted, as I understand it. Now, your honor, let us have that marked in evidence with that statement. The book is marked and the rule 80 appears here*a*.

Mr. ERWIN: Of course I want to add to that that the draw-
150 ing of the juries in open court has always been during Judge Speer's time, carried out by the judge drawing them in open court himself.

Mr. ROSE: I don't care about that. That is no part of this admission. There is no order about it or anything of the kind. That is what I want.

Mr. ERWIN: There is an order, for instance, just prior to the drawing of this particular grand jury.

Mr. ROSE: We will get that by and by. I know what you want, but I want to get things in order and shape.

Mr. ERWIN: I have stated it I think substantially.

Mr. ROSE: Will you admit that the paper correctly sets forth the order of January 27th, 1897?

Mr. ERWIN: I have never seen that order and therefore don't know whether it is correct. I cannot admit it is correct, although it probably is correct.

Mr. ROSE: Will you admit that the order set out under date of April 7th 1897, in this book, is correctly set out in this book?

Mr. ERWIN: I don't admit that, because I don't remember the terms of the specific order in question, and cannot admit it.

151 Mr. ROSE: Then I will have to supply that in some way.

The COMMISSIONER: Suppose Mr. Erwin sends up a certified copy and it can be used in lieu of the original.

Mr. ERWIN: I have no objection to certified copies of anything, in so far as the waiver of the original being produced, but whether it is admissible on other grounds, that is a question.

Mr. ROSE: Of course we can consent to put in any paper that we want to, whether it is legal evidence or not, but I don't wish to be foreclosed from the point that I have made that the indictment offered in evidence being a certified copy of the indictment, is no evidence and cannot be admitted here, by myself putting in a certified copy of a paper.

Mr. ERWIN: I don't object to your putting in a certified copy of that order, reserving your rights on other matters.

The COMMISSIONER: That will cover it.

Mr. ROSE: Then it is admitted that rules 81, 82, 83 and 84 are correctly set out in this compilation? I mean all the rest of them under the head "juries."

Mr. ERWIN: I admit that what purports to be rules 81, 82, 83 and 84 were rules originally adopted by Hon. Judge Erskine in 1880, the judge preceding Judge Speer—that is, of the district court,

152 Judge Erskine presiding—but I state that these rules were modified by certain orders in regard to drawing the juries at certain terms of the court since that time; namely, the special order made directing when the juries were to be returned, when the venires were to be issued, and all case, in every case.

Mr. KELLOGG: Why not take these in subject to comparison with the original. It will save trouble, and you will be at liberty to do it.

Mr. ROSE: These two orders of January 26th and April 7th 1897?

Mr. ERWIN: No, I don't want those in.

(By Mr. ROSE:)

Q. Mr. Erwin, have you seen the original of the order of April 7th 1897?

A. I don't remember that I ever saw it. I may have.

Mr. KELLOGG: It is understood that a certified copy of this order may be introduced with the same effect as the original.

Mr. ERWIN: The same as the original, of course, subject to any objection which might be had to the original if it were here.

Mr. KELLOGG: Oh, yes.

Mr. ROSE: Now let these rules with these admissions be marked in evidence and taken in the record.

153 Received as Exhibit "H 5" of this date, reading as follows:

80.

The full names of persons selected by the clerk and jury commissioner from whom jurors are to be chosen, together with the names

of the counties in which they reside, respectively, shall be written each on a separate slip of paper, and also entered into a book to be kept by the clerk; every slip before being placed in the box shall be so folded up that neither the name nor county within it can be seen; said box shall be sealed and locked by the judge of the court; the box shall be kept by the clerk and the key thereof by the marshal.

During every regular term of the court the grand and petit jurors for the next succeeding regular term shall be drawn as follows: The said box shall be brought into open court, and the seal thereof be broken and the box unlocked by one of the judges of the court who shall, also in open court, cause to be drawn therefrom not less than sixteen nor more than twenty-three persons to serve as grand jurors, and not less than fifteen nor more than thirty-six persons, the precise number to be fixed by the judge, to serve as petit jurors. When a slip is drawn from the box, the name thereon shall be audibly announced and shall be entered on the venire or a paper at-
154 tached thereto. After every drawing and after every deposit of new names therein, the box shall be sealed and locked by the judge, and he shall deliver the box to the clerk and the key to the marshal.

If grand or petit jurors or both are required for any adjourned or special session of the court, or if from failure to draw or from any other cause, there shall be at any term of the court a deficiency in whole or in part of regular jurors, the court may provide such grand or petit jurors or supply such deficiency by drawing a sufficient number of names for that purpose from the box, which drawing may be made in open court, as hereinbefore provided, or in vacation in the presence of the judge of the court and the clerk or his deputy; the marshal or his deputy; the district attorney or assistant district attorney, and the jury commissioner and such other persons as may choose to be present not less than three. If the court should sit at any regular term, the jurors drawn for that term shall stand over for the next term that shall be held.

The marshal shall summon jurors by delivering to each personally or by leaving at his usual residence, a written or printed summons.

81.

At least thirty days before the next term of the court the
155 clerk shall make out and deliver to the marshal a venire directing the marshal to summon all the persons drawn, as mentioned in the preceding rule—unless the judge otherwise direct—to attend as jurors at such term.

82.

To all writs of venire the marshal or his deputy shall make a return to the clerk, exhibiting in three several columns those jurors on whom a summons has been served personally, whose who have been summoned by copies or notices left at their houses and those who could not be found.

83.

The marshal in his summons to each juror shall express the day, hour, place and court at which he is to appear.

84.

In challenging jurors not more than one minute shall be allowed either party for each challenge.

156 Exhibit "I 5," S. H., October 23rd, 1900, reading as follows:

Ex. I 5. S. H. Oct. 23, 1900.

In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

In re Revision of the July List.

It appearing to the court that there is a necessity for a revision of the jury of this court, it is upon consideration ordered that Edward S. Elliott be and he is hereby appointed jury commissioner of this court for the eastern division of the southern district of Georgia, and it is ordered that the said Edward S. Elliott and H. H. King, clerk of this court, conformably to law, shall proceed as soon as may be to revise the jury-list of said court, and for the purpose of convenience and economy in serving said jurors, it is ordered that the jurors be selected from the counties of Chatham, Bryan, Liberty, Ware, Glynn, Wayne, Pierce, Clinch, Lowndes, Brooks, Thomas, Decatur, Effingham and Bulloch. January 26th, 1897.

EMORY SPEER, *Judge.*

Endorsement: District court of the United States, eastern division, southern district of Georgia. *In re* revision of July list and boxes. Order. Filed January 26, 1897. S. F. B. Gillespie, deputy clerk.

157 I hereby certify that the above is a true and correct copy of the original order for revision of jury list, now of file and record in my office.

Seal U. S. District Court, Southern District of Georgia.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Savannah, Georgia, this 15th day of October, A. D. 1900.

H. H. KING, *Clerk.*

158 Cross-examination by Mr. ERWIN:

Q. In making up the names for the jury-box—the clerk and the jury commissioner—on what are the names that go into the box written?

159 Mr. ROSE: He has not proved that he makes them up.

Q. If you know?

Mr. ROSE: I object to that now unless it is confined to the eastern

district. He won't let this order in because he is not the clerk of the eastern district.

Mr. ERWIN: He saw the names drawn from the box and can tell what they did.

Mr. KELLOGG: That is not what he asked. If he wants what he saw drawn from this box all right.

Mr. ERWIN: I am asking whether they were written on little slips of paper.

Mr. KELLOGG: You have given what would be the correct evidence, the description of the cards he saw taken out of the box, but the question of what was the custom of making out the tickets, that we have no right to have.

Mr. ERWIN: I didn't ask him about the custom.

(By the COMMISSIONER:)

Q. What was on them? You saw them drawn out?

A. I saw them.

(By Mr. ERWIN:)

Q. What were the names on?

A. Slips of paper.

Q. What was on the paper, what appeared on the paper?

A. The name of the juror selected and the county in which he lived.

(By the COMMISSIONER:)

Q. Was their residence on there?

A. The county.

160 Q. Was their residence on there, of a certain place; certain street number I mean?

A. Oh, no sir.

(By Mr. ERWIN:)

Q. What was on the little slip of paper was the name of the juror and the county in which he resided?

A. It was.

Q. Many of the jurors resided in the country not being in any town, did they not?

A. They did; some in the city and some in the country.

Q. Now how were these slips fixed in the box; were they or not folded?

A. Are you speaking of——

Q. The slips containing the names and the county of the juror, how were the slips put in the box, were they open or folded.

Mr. ROSE: He don't know anything about it.

Q. How were they when you saw them in the box? You saw them in the box?

A. When they were taken out they were folded.

Q. They were folded before they were taken out, don't you mean? You don't mean they were taken out and then folded?

A. They were folded when they were put in, I presume. I didn't see them put in.

Q. You used an expression that was ambiguous. When they were taken out they were folded might mean they were folded when they were taken out, but when they were taken out of the box what was the condition?

A. Folded.

Q. They were folded before they were taken out and at the same time they were taken out they had already been folded?

A. I saw them when the box was opened, and they were
161 folded.

(By the COMMISSIONER:)

Q. They were folded then?

A. Yes.

(By Mr. ERWIN:)

Q. Were they folded with the names and the county of the jurors folded on the outside, or on the inside?

A. On the inside.

Q. When this drawing took place, it took place in open court, did it not?

A. It did.

Q. The judge was on the bench?

A. He was.

Q. The jury-box for the district was brought in and placed before the judge, was it not?

A. It was.

Q. At the time the box was brought in it was not only locked, but it had over the keyhole a piece of paper pasted with the judge's name written across it, and each corner sealed with sealing wax with the judge's seal on it, was it not?

A. I don't remember whether the paper had on it the name of the judge, or the name of the jury commissioner and the clerk, but the paper was on it and it was sealed.

Q. Sometimes you mean when the boxes are opened they do have the name- of the jury commissioner and clerk on them, and sometimes they have the name of the judge on them. Now under what circumstances does the box have the name- of the jury commissioner and the clerk on it, and under what circumstances does it have the name of the judge on it?

162 Mr. ROSE: I object to that. If he saw it put on, he can tell, but it is the seal of this box that is in question.

Mr. ERWIN: It is cross-examination.

The COMMISSIONER: He may answer it if he knows.

(By the COMMISSIONER:)

Q. Did you see them put it on yourself?

A. I did not.

Q. Never saw the judge or clerk put it on?

A. You mean when it was—before it was sent to Macon?

Mr. ERWIN: The question I am asking the witness, may it please your honor, is with reference to the answer that he don't remember positively whether it was the judge's name or the clerk and jury commissioner's, and I ask him why does he make that answer.

The WITNESS: Shall I answer that?

The COMMISSIONER: Yes, answer it.

Mr. KELLOGG: He can't give his reason for making that answer.

Mr. ERWIN: He can state facts which make him say that.

Mr. KELLOGG: That is not a fact, why does he remember.

The COMMISSIONER: He is the deputy clerk of the court.

Mr. KELLOGG: He can tell whether the seal was on.

163 The COMMISSIONER: And he can tell why it was left off, if it was.

Mr. KELLOGG: He is not asked that question. I don't think it calls for any fact.

The COMMISSIONER: Answer the question.

Exception taken.

A. I say that after a box is revised by the clerk and the jury commissioner, that it remains locked and sealed, and upon the paper which seals the box is entered the name- of the clerk and jury commissioner who revised the box.

(By Mr. ERWIN:)

Q. Now go on.

A. After the box is——

(By the COMMISSIONER:)

Q. After you have drawn your jury and the box is locked up, what then?

A. After the jury is drawn and the box locked up, then the judge places a paper over the box and seals it and writes his name on it.

(By Mr. ERWIN:)

Q. What you mean to say then is, you don't recollect whether this was the first drawing after the revision of the box, or whether there had been preceding drawings, and therefore you can't tell whether the judge's name was on it or not?

Mr. KELLOGG: That is pretty tough.

The COMMISSIONER: I want to get light on it myself.

Mr. KELLOGG: Yes; but I don't want him to put the answers in his mouth. That is Erwin, district attorney, not Erwin, clerk.

164 Mr. ROSE: He says he don't remember whether it had the judge's name on it or clerk and jury commissioner's.

Mr. ERWIN: They have gone into the question as to how the box was revised, and I have a right to explain how it was.

Mr. ROSE: He wasn't present when it was revised and never saw the box revised in his life, and I haven't asked him anything about the revision of the box.

The COMMISSIONER: He may be making him his witness to a certain extent.

Mr. KELLOGG: He can't make it out by custom.

Q. (Question read.)

Mr. ERWIN: The judge's name or the jury commissioner's name?

A. That is what I mean to say; that I don't remember whether that was the first drawing after the box was revised or whether it was some subsequent drawing to the first.

(By the COMMISSIONER:)

Q. Now right here, do I understand the practice down there to be that every time a jury is drawn the judge puts his name over the keyhole of the box?

A. Yes sir, after it is drawn and the box is locked and there is a piece of paper——

Q. I understand you draw a jury out?

A. Yes sir.

165 Q. Now do I understand that after you draw the jury out that the judge puts a piece of paper over the keyhole of the box?

A. Yes sir; the paper is handed to the judge by the clerk or by the marshal, and he writes his name across it.

Q. And puts it over the keyhole?

A. And puts it over the keyhole.

Q. Is that done at every drawing?

A. Done at every drawing.

Q. You talk about a subsequent drawing. I don't understand whether it is the first drawing or a subsequent drawing?

A. I say I don't know whether that was the first drawing after the revision of the jury-boxes, or whether it was some subsequent drawing.

Mr. ERWIN: If the jury-boxes had been revised by the clerk and jury commissioner they put their names on the box and on the first drawing their names would be there, but if after the first drawing the judge having opened the box, he would put his name on it and it would be on it afterwards.

The COMMISSIONER: I understand now.

(By Mr. ERWIN:)

Q. Can you state what the position of the judge was and what was your position at the time of the drawing of the jury with reference to the position you were at the bench?

A. The judge was sitting on the bench, I was about two feet and a half to his right, sitting also on the bench.

Q. You mean with the rostrum or table in front of you?

166 A. I mean to the judge's right; the judge was to my left.

Q. Then where was the jury-box?

A. The jury-box was in front of the judge on the stand.

Q. Now when the names were taken out of the box what was done; just explain how it was done?

A. The judge drew the names from the box consecutively, and those that he desired me to enter on the list he called out and handed to me and I entered them on the list.

Q. Before the drawing was entered upon, was there an order of the court made?

A. There was.

Mr. ROSE: In relation to what?

Mr. ERWIN: In relation to the drawing.

A. There was an order.

Q. Have you a certified copy of that order in your possession?

A. I have.

Q. Where is it?

A. Here.

(Paper produced by witness.)

Q. Is that the order?

A. That is a certified copy of the original order.

Q. That is a true copy of the original order?

A. It is.

Q. You know it from personal inspection?

A. It is.

Mr. ERWIN: I ask to have this certified copy of the order marked exhibit for identification.

Marked Exhibit 327, S. H., for identification. October 17th 1900.

167 Mr. ROSE: I object to it, as it appears on its face to be incomplete. It does not state at what court it was entered, or the papers upon which it was entered. It refers to something annexed, which is not annexed, and it is not an order but an extract from the minutes, according to this paper. "Upon consideration of the annexed notice." If they put the whole thing in I don't object to it.

Mr. ERWIN: I will state that I have written for a certified copy of the motion and order, but I did not get it when I wrote for it before.

Mr. ROSE: Then hold this until you get that.

Mr. ERWIN: I will put this in now. It is the whole order. There was a motion made on which the order was founded.

The COMMISSIONER: I suppose you will have the whole of it to take the place of that.

The WITNESS: I should correct my testimony in that respect and say that that is an extract from the minutes. It appears to be.

Q. I call your attention to this language in that order: "Upon consideration of the attached notice from the United States attorney, and the matters therein stated it is ordered by the court that a grand jury be drawn from the jury-boxes of the eastern division of the district and summoned to attend the session of the court to be holden in the city of Savannah on December 4th, 1899, and
168 that said jurors be returned from the counties of said eastern division other than the counties of Chatham and Glynn, it

appearing to the court that such return of jurors will be most favorable to an impartial trial and prevent the incurring of unnecessary expense." Now you stated about the judge handing over certain of the tickets containing the names of jurors to you, and not handing over certain ones drawn to you. Now do you know the counties, *which of* the jurors so taken out were not handed over to you?

A. I do.

Q. What counties were they?

A. Chatham county and Glynn county in the southern district of Georgia.

Q. When the judge drew a name——

Mr. ROSE: Let him state, won't you, Mr. Erwin?

Mr. ERWIN: He is your witness, and I have a right to lead him if I choose to do so.

Q. When the judge drew a ticket out did he call out in every case the county of the jurors from the ticket, as he held the ticket up before him?

A. What slips do you refer to?

Q. The slips drawn out of the box, in every case did he call out the county of the jurors as the name was drawn?

A. My recollection is that he did.

Q. And when the names were Chatham and Glynn he did not hand the tickets over to you, and when they were other names he did hand them over to you?

Mr. KELLOGG: He didn't say that he saw them. He said
169 he didn't see the names on the papers. How can he tell? The question calls for something the witness could not know because he didn't see the tickets that were not handed to him.

The WITNESS: I said I did not see the names on the Chatham and Glynn county slips. I did on the others; scanned them each one as they were handed to me.

Mr. ERWIN: He said also that the judge called out the counties of Glynn and Chatham and laid them aside.

Q. That is true, isn't it?

A. My recollection is that he called out the counties of Chatham and Glynn and put them in the box; after he had taken them out, put them back in the box.

Q. Whenever he took a name from the box in which the residence of the ticket as called out was Chatham or Glynn, he returned that to the box?

A. He did, as I recall.

Q. But whenever the name drawn was of other counties of the eastern division, he handed the ticket over to you and called out the full name and you took the ticket and wrote it on your list?

A. That is my recollection.

Q. After that list was completed, then there was an order made in regard to issuing a venire, was there not?

A. There was.

Q. And then the venire for the summoning of the grand jury was issued.

Mr. KELLOGG: Well, we ought to have those papers.

170 Mr. ERWIN: I am not going into it. You are the men that should have brought those here if you are attacking the record. I am going to show that these are matters of record.

Mr. KELLOGG: You can't show it was a venire without producing it.

The COMMISSIONER: You can ask him what the fact is.

Mr. KELLOGG: He cannot.

The COMMISSIONER: He can and I will allow it and you can take your exception.

Mr. KELLOGG: You won't allow it without hearing me.

The COMMISSIONER: It is to save time.

Mr. KELLOGG: Now he is asking for the contents of it.

The COMMISSIONER: He is asking whether a venire was issued, and that is a simple fact.

Mr. KELLOGG: But that depends upon the — in which it was issued.

The COMMISSIONER: When he goes into the contents of it he has to produce it.

Mr. KELLOGG: You can't tell whether a venire was issued until you see it.

The COMMISSIONER: He can tell as deputy clerk of the court. I can tell.

Mr. KELLOGG: You can tell whether a paper is issued with the word "venire" on the back of it.

171 The COMMISSIONER: He can tell whether a venire is issued as clerk of the court.

Mr. KELLOGG: I object to the question as calling for the contents of the paper.

The COMMISSIONER: And I overrule it and give you an exception. Was a venire issued. That is the question.

A. It was.

Mr. ERWIN: What I am endeavoring to show is that these are matters of record, and he is undertaking here to prove by parole a lot of things that ought to be proved by record evidence. That is the purpose of my examination.

Mr. ROSE: I haven't asked him anything about the issuing of the venire or anything else.

Mr. KELLOGG: You are making him your witness.

The COMMISSIONER: He has answered a venire was issued, but you can't go into the contents of it unless produced.

Mr. ERWIN: They have undertaken to tell how many names were entered on that venire.

Mr. ROSE: I haven't any such thing.

Mr. ERWIN (continuing): How many names were handed over on the list, and the list itself is a part of the venire, and all these are record evidence and I am trying to show it was record evidence and

that they ought to produce the record evidence and not un-
172 dertake to go into it by parole.

Mr. ROSE: Now what I have proved by this witness does not appear on any record. I have proved that the hand of the judge took the tickets out of the box, that when he, in his own mind or from his sight, saw fit to reject one, he did it. Does that appear of record? Is there any record of that kind?

The COMMISSIONER: No; that is a fact.

Mr. ROSE: That is a fact and that I can prove, and by so doing I am blameworthy for calling these men here.

The COMMISSIONER: You have a right to prove what actually took place in the presence of the witness.

Mr. ERWIN: Then that presumptively took place, when the record shows that the judge ordered the doing of the very thing he has proved.

Mr. KELLOGG: You say the judge made an order?

Mr. ERWIN: The order speaks for itself.

Redirect examination by Mr. ROSE:

Q. Mr. Erwin, you answered a question of the district attorney's that on the 22nd of November that the jury-box of the district court was in the court-room at Macon?

A. I did.

Q. Do you mean by that to have us infer or understand
173 that there was only one jury-box for the district court for the southern district of Georgia?

A. I mean by that to say that there was only one jury-box for the district court for the eastern division of the southern district of Georgia, in the court-room.

Q. There is a box for the western division of the southern district of Georgia, is there not?

A. There is.

Q. And there was at that time?

A. There was.

Q. And that was not there?

A. It was not in the court-room.

Q. No names were drawn from that box by the judge on that day?

A. No names were drawn from the western division jury-box.

Q. The marshal has testified here, Mr. Barnes, that he personally took some of the names from the jury-box and handed them to the judge, or put them back on discovering that they were from Chathan or Glynn?

Mr. ERWIN: The marshal did not testify anything about putting them back.

Mr. ROSE: Or laid them down alongside of the box.

Mr. ERWIN: He said he handed them to the judge.

Q. Well, he took some names from the box. Do you mean to differ with him about that?

A. I don't remember about that, Mr. Rose. The marshal may have assisted the judge in taking some names from the box.

174 Q. You yourself testified on your cross-examination that the judge drew all the names from the box. You don't mean by that testimony to differ with the marshal?

A. I don't mean by that testimony to say that the marshal did not take up a few and assist the judge as he was drawing them from the box.

Q. Mr. Erwin, the session of the district court you have testified—a session of the district court was in session. For what division on the 22nd of November, when this jury was drawn?

A. It was in session for both divisions.

Q. For both divisions?

A. Yes sir.

Q. Do you hold court for both divisions in Macon?

A. The courts are open when the judge is not present in the division from Monday to Monday.

Q. That is for the purpose of clerk's fees?

A. No; by order of the court.

Q. Was Mr. King there first on the 22nd of November in court?

A. He was not.

Q. He is the clerk of the district court for the southern district, is he not?

A. He is.

Q. You are the deputy clerk of the district court assigned to the western division, are you not?

A. My residence is at Macon in the western division. I am deputy clerk for the entire district.

Q. For the southern district?

A. For the southern district.

175 Q. Do you perform any duties in the eastern division?

A. Occasionally.

Q. In the eastern division, I mean in Savannah?

A. Occasionally.

Q. Who is the deputy clerk that usually performs the duties in the eastern division?

A. S. F. B. Gillespie.

Q. Was he present in court at that time?

A. He was not.

Q. When the grand jury was drawn preceding the one drawn in November 1899, at Macon, when-ever that was, what was done with the names of jurors who were drawn after the drawing had taken place; with the slips containing their names?

A. Placed in an envelope and the date of drawing marked on the envelope and put back in the box.

Q. The envelope sealed up?

A. Sealed up ordinarily; not with wax.

Q. I don't mean that. I am not referring now to the November drawing?

A. I understand.

Q. The one prior to that time?

A. Some previous drawing that had taken place before.

Q. And that was the custom in the case of every drawing, was it?
A. Yes sir.

(By the COMMISSIONER:)

Q. Let me see if I understand it. Do I understand that a lot of tickets were drawn out of the wheel? Do you mean to say they were sealed up and an envelope, all the balance that are not
176 drawn are sealed up?

A. Those that are drawn and entered on the list are placed in an envelope and sealed up and put back in the box.

Q. What do you mean; put back in the jury-box with the tickets that are not drawn there?

A. There is a compartment in the jury-box; a division, and it is generally put in the back or front division.

Q. Now you have those tickets and they are entered on a list, of course, which list is attached to the venire and given to the marshal to serve?

A. Yes.

Q. Subsequently you enter those in a book, don't you; don't you keep a list of the jurors in a book, what is called a jury book, so as to call off in court, whether they are present or not?

A. I keep my list on the regular minute book of the court.

Q. Don't you keep the tickets out until after you make that call in court?

A. No sir; I have the list and from that list I enter on the list the names that were drawn.

(By Mr. ROSE:)

Q. The place where you put the envelope sealed containing the names—the slips—is that in the place where the loose slips are?

A. In a separate division.

Q. That is kept in a separate division for how long?

A. Until—well, for a year.

Q. And then the envelope is opened and the names are put into the other compartment and mixed up with the others?
177 A. Yes sir.

Q. Who does that?

A. Sometimes the marshal does it, and sometimes the judge.

Q. That is, he takes from this compartment containing this sealed envelope—I don't mean sealed in the sense of sealed with wax, but closed envelope—the envelope and opens it and puts the names that are in the envelope in the box from which the jurors are to be drawn?

A. Either the judge or the marshal, in the presence of the judge, takes the envelope—sometimes he does—takes the envelopes and opens them and mixes them up with the other names.

Q. Now at the time of the November drawing, how many envelopes were there in the other compartment?

A. I don't remember.

Q. Were there any?

A. I don't remember.

Q. You don't remember whether there was any?
A. No.
Q. And will you swear there were not?
A. No, sir, I will not.
Q. Is the city of Savannah in Chatham county?
A. It is.

Recross-examination by Mr. ERWIN:

Q. You are deputy clerk of the circuit court also for the southern district of Georgia?
A. I am.
178 Q. There is a jury-box known as the circuit court jury-box also for the eastern division, is there not?
A. There is.
Q. So that there are two jury-boxes for the eastern division, one for the circuit and the other for the district court?
A. Yes.

Mr. ERWIN: I want to tender in evidence this certified copy of the order, marked Exhibit 327 for identification.

Mr. ROSE: I thought you were going to wait until you got the full minutes.

Mr. ERWIN: I want it to go in *in* the record at the right place. I will state that I prefer to have the motion go with the order, and if I get it we can by agreement substitute it for the order alone.

Mr. KELLOGG: We object to the order because it is a certified copy and not the original.

The COMMISSIONER: I understood that after they had completed this document that you would not object to its going in as a certified copy.

Mr. KELLOGG: I don't object, but he is offering it now.

Mr. ROSE: I do not waive the point that it is not proper evidence because certified.

Mr. KELLOGG: Get the whole of it and there will be no trouble about it, but we want the whole of it.

179 The COMMISSIONER: I will reserve decision until you get it then.

Exhibit 327 for identification reads as follows:

Ex. 327. S. H. Oct. 17, 1900.

Department of Justice, office of United States attorney, southern district of Georgia.

MACON, GA., *Nov.* 22, 1899.

To the Honorable Emory Speer, judge of the district court of the United States for the southern district of Georgia.

SIR: In pursuance of the provisions of section 810 of the Revised Statutes, I have the honor to state that at the approaching session of the district court to be holden in the city of Savannah, on Decem

ber 4th next, a grand jury will be needed to pass upon certain cases the most important of which involve matters touching frauds alleged to have been committed in river and harbor improvements carried on by the Government in and about the cities of Savannah and Brunswick and which received much discussion and publicity among the people in the counties in which those cities are situate, making it more difficult and expensive to obtain an impartial trial of such matters from jurors drawn from those counties than if the jury be drawn from the other counties of the eastern division
180 of the district, and a jury drawn from the latter-mentioned counties would be most favorable to an impartial trial. On behalf of the United States I therefore respectfully request that the court will exercise the discretion reposed in it by section 802 Revised Statutes and have grand jurors for said session returned from the counties of the eastern division of the district other than the counties of Chatham and Glynn.

Respectfully, MARION ERWIN,
U. S. Attorney.

In the United States District Court for the Eastern Division of the Southern District of Georgia.

In re THE GRAND JURY.

Motion for and Order Thereon.

Upon consideration of the attached notice from the United States attorney, and the matters therein stated it is ordered by the court that a grand jury be drawn from the jury-boxes of the eastern division of the district and summoned to attend the session of the court to be holden in the city of Savannah on December 4th 1899, and that said jury be returned from the counties of said eastern division other than the counties of Chatham and Glynn, it appearing to the court that such return of jurors will be most favorable to an impartial trial and prevent the *re*curring of unnecessary expense.

In open court, Macon, Ga., Nov. 22, 1899.

181 Endorsement: U. S. district court for eastern division, southern district of Ga. *In re* grand jury. Motion for grand jury to be drawn, and order thereon under sec. 810 R. S. Filed November 22nd 1899. L. M. Erwin, deputy clerk.

I hereby certify that the above is a true and correct copy of the original motion and order now of file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Savannah, Georgia, this 20th day of October A. D. 1900.

[Seal U. S. District Court, Southern District of Georgia.]

H. H. KING, *Clerk.*

182 SAMUEL F. B. GILLESPIE, a witness called on behalf of the defence, being duly sworn, testified as follows:

Examined by Mr. ROSE:

Q. Where do you reside?
A. Savannah, Georgia.
Q. What is your business or occupation?
A. I am deputy clerk of the United States courts, circuit and district courts.
Q. In Savannah?
A. In Savannah.

Examination adjourned to Thursday, November 8th 1900, at 10.45 a. m.

SAMUEL F. B. GILLESPIE, examination resumed.

By Mr. ROSE:

Q. How long have you been deputy clerk of the district court for the southern district of Georgia?
A. Since the 30th of June 1886; 14 years and a little over.
Q. Where is your office located?
A. In the new public building, corner of Bull and President streets, Savannah, Georgia.
Q. How long has it been in that building?
A. Since the 1st of October, a year ago.
Q. Prior to that time was the clerk's office for that division—the eastern division—in the city of Savannah?
A. In the custom-house building.

183 Q. And it was there all the time you were deputy clerk from 1886 until you moved to the new building in October 1899?
A. Yes sir.
Q. During the time you have been clerk have you or have you not been in personal charge and control of the records there?
A. Yes sir.
Q. Filing of papers sent there?
A. Yes sir.
Q. And entering them in the minutes of the court?
A. Yes sir.
Q. How many divisions are there in the southern district of Georgia?
A. Three.
Q. Name them?
A. Eastern, western and northeastern.
Q. Savannah is in what division?
A. Eastern.
Q. How many counties are there in the eastern division of the southern district of Georgia?
A. 28.

Q. And was there the same number of counties during all the time that you have been deputy clerk?

A. No sir, the northeastern division was taken off from there.

Q. When?

A. I cannot say; I think it was in 1888 or 1889.

Q. Since January 1st 1897, how many counties have there been in the eastern division of the southern district of Georgia?

A. Twenty-eight.

Q. I call your attention to Exhibit "I 5," for identification which is a certified copy of an order for the revision of the jury-list, dated 27th day of January 1897. Do you recall ever seeing that paper before?

A. Yes sir; I made it myself.

184 Q. And you copied it from the original?

A. Yes.

Q. Where was the original?

A. In the clerk's office.

Q. At Savannah?

A. Yes.

Q. On file?

A. On file, yes.

Q. Is the original also entered in the minutes of the court?

A. Yes sir.

Q. How many counties are there named in that order?

A. Fourteen.

Q. Those counties are all counties of the eastern division?

A. Yes sir.

Q. The other fourteen counties of division are not named in that order?

A. No sir.

Q. That order among other things appoints a jury commissioner. What was his name?

A. Edward S. Elliott.

Q. Do you know whether or not of your own knowledge that shortly after that time, or some time after that, that Mr. Elliott qualified as a jury commissioner?

A. Yes sir.

Q He did?

A. Yes.

Q. Do you know how long he continued to hold that office as a jury commissioner?

A. Until May 23rd, 1899.

Q. Was there any action taken by the court with reference to his ceasing to be an officer?

A. Yes sir.

Q. Was that action entered upon the minutes of the court?

A. Yes sir.

Q. Have you a copy of those minutes here, certified?

A. Yes sir.

185 Q. Be kind enough to hand it to me?

A. This is the copy of his resignation and the acceptance by the judge, district court minutes 48.

Q. This is correctly made by you from the minutes of the court?
A. Yes, sir.

Mr. ROSE: I offer it in evidence, stating on the record so that we can have it, that it is the resignation of Mr. Elliott as jury commissioner, accepted on the 23rd of May, 1899.

Ex. K 5. S. H. Nov. 8, 1900.

In the District Court of the United States for the Southern District of Georgia, Eastern Division.

Resignation of Jury Commissioner.

To the Honorable Emory Speer, judge presiding:

The petition of Edward S. Elliott respectfully shows that he desires to resign as jury commissioner for the district court of the United States for the southern district of Georgia, eastern division.

EDWARD S. ELLIOTT.

The resignation of Edward S. Elliott, as jury commissioner as above stated, is accepted.

May 23, 1899.

EMORY SPEER, *Judge.*

D. C., 48. Filed May 23, 1899.

S. F. B. GILLESPIE,
Deputy Clerk.

I hereby certify that the above is a true and correct copy of the resignation and acceptance of the same, of Edward S. Elliott, as jury commissioner for the eastern division of the southern
186 district of Georgia, as the same remains of record and on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Savannah, Georgia, this 26th day of October 1900.

[Seal U. S. District Court, Southern District of Georgia.]

H. K. KING, *Clerk.*

The WITNESS: Mr. Rose, one minute, please, about that paper. The resignation of the jury commissioner is not on the minutes. The order of the judge is on the minutes.

Q. The resignation is, however, on the files, and copied by you there?

A. Yes sir; and the acceptance by the judge, D. C., 48 is on the minutes.

Q. D. C. 48, means what?

A. District court, 48.

Q. Of the book of minutes?

A. Yes sir.

Q. From the 23rd of May 1899, down to the present time, has

there been any jury commissioner for the southern district of Georgia in the eastern division?

A. No sir.

Q. One has never been appointed?

A. I have no record of it in the Savannah minutes.

Q. You have all the minutes there of that division?

A. Yes sir.

The COMMISSIONER: There had been no jury commissioner since when?

187 Mr. ROSE: May 23rd, 1899.

The WITNESS: For that division.

Mr. ROSE: For that division.

Q. Some time after January 26th, 1897, the date of the appointment of Mr. Elliott as a jury commissioner, do you know whether anything was done with reference to revising the jury-list by the jury commissioner?

A. Yes sir.

Q. When was that done?

A. It was in the latter part of March.

(By the COMMISSIONER:)

Q. What year?

A. 1897.

(By Mr. ROSE:)

Q. 1897?

A. Yes.

Q. Now tell us what was done with reference to putting names in that box; in the jury-box?

A. Mr. King, the clerk, and Mr. Elliott, the jury commissioner, addressed letters to each of the county clerks of the 28 counties——

Mr. ERWIN: Now wait a minute. I object to the line of evidence that defendants are now entering upon, upon the following grounds: First, that it is an attempt to go behind the records of the district court of the United States for the eastern division of the southern district of Georgia, which is a court of record; its acts and proceedings are to be proved by matters of record and not by oral testimony. That if there be any irregularities—which I do not admit—but if there be any irregularities of any sort, that it cannot be raised in a collateral proceeding. The

188 matter of the assembling of the grand jury, the empaneling of the grand jury, the returning of the indictment into court, and all that, are matters entered upon the minutes of the court and import verity, and if attached at all it would have to be in the court where these proceedings were had and at a proper time and place. The defendants, as appears of record, were indicted on December 8th 1899, and numerous terms of the court have intervened since that time, and since the defendants were apprised by actual arrest in this court—the southern district of New York—of the proceed-

ings had against them down there, and if any such irregularities exist they have long since been waived and at any rate cannot be brought out by oral testimony in a collateral proceeding here and would have to be in a plea to the indictment, or demurrer in the court where the indictment is pending. And, second, I object to the testimony about the manner in which the jury commissioner and the clerk made up their list, entering into correspondence. We do not know what those letters were and we are going now into oral testimony as to contents of letters addressed by the jury commissioner and his clerk.

The COMMISSIONER: Of course you can't go into that unless this clerk did it himself.

Mr. ROSE: This is simply preliminary.

189 Mr. ERWIN: The whole proceeding is an attempt to go behind the record, and therefore I enter my formal objection to this whole line of testimony.

Mr. ROSE: May I put on the record the reason for asking this question. Among the papers offered in evidence is an alleged indictment. That is a piece of evidence before your honor, which your honor is to consider in the examination of this question of probable cause. Another thing, they are asked to be removed for trial on that indictment. I propose to show before I get through with it that that indictment is false in that it states a grand jury properly drawn for the eastern division &c. In other words, that that piece of evidence can be given no force, weight or effect by your honor in this determination, because it has no legal existence. The same way as if a deed had been tendered in evidence it would be entirely proper for me to show that the signature was a forgery, although it may have been properly acknowledged. That is the line I am on.

The COMMISSIONER: I overrule the objection and take the answer.

Q. Do not give us the contents of the letter, but simply state certain letters were sent to county clerks, if you know of your own knowledge?

A. Yes, certain letters were sent.

190 Q. Now was there a list of names made up, now with reference to the revision of the jury?

A. Yes sir.

Q. Was that put in a piece of paper, in a book or what?

A. They were letters we received from clerks.

Q. Was there a list of names made up in a book called a jury book?

A. That was after the tickets were made.

Q. Were there tickets made up?

A. Yes sir.

Q. Containing what?

A. Containing the names we selected.

Q. And anything with reference to the counties?

A. Yes sir, and post-office and address.

Q. And counties?

A. Yes sir.

Q. The counties included were only of the 14 mentioned in this order of January 27th 1897, Exhibit "I 5"?
A. No sir; there were 28 counties.
Q. Of the whole 28 counties?
A. Yes sir.

The COMMISSIONER: You are speaking of when this was originally made up?
Mr. ROSE: No; I am speaking of the time after Elliott's appointment.
The WITNESS: That was what I meant.

Q. For the whole 28 counties?
A. For the whole 28 counties and they are in this book.
Q. Look again; I know you are wrong, and I don't want to have you in error about it.
A. No; I am wrong about it. It is in these 14 counties.
Q. Of the 14 counties mentioned in this order?
A. Yes sir.
191 Q. No names from any other part of the division was put on the tickets except from the 14 counties included in this order of January 26th 1897, which is Exhibit "I 5" for identification. Is that right?
A. That is right.
Q. From these tickets was a book made?
A. Yes sir.
Q. By whom?
A. By myself and the clerk.
Q. And compared by you?
A. Yes sir.
Q. And it was made accurately?
A. Yes sir.
Q. Where is that book; the original book?
A. It is in Savannah.
Q. In the clerk's office?
A. Yes sir.
Q. Have you made a copy of that book?
A. Yes sir.
Q. Have you it here?
A. Yes sir.
Q. Let me see it?
A. (Book produced by witness.) It is certified by the clerk.
Q. This book endorsed on the outside "United States district court jury-list, eastern division, southern district of Georgia, revised for May term 1897," has attached to it the certificate of the clerk that it is a copy of the original. In addition to that have you personally compared this book with the original?
A. Yes sir.

Mr. ROSE: Now I offer it in evidence.
Mr. ERWIN: The same objection we have already made in regard to the line of testimony going in, as already stated. I do not object

to the certified copy on the ground that the original ought
192 to be brought instead of the certified copy, but the objection is made the same as if he had the original here. If he had the original here I would object on the ground that the original is brought away from the court.

Objection overruled. Exception taken.

Marked Exhibit "L 5," S. H., November 8th 1900.

193 Ex. L 5. S. H. Nov. 8, 1900.

United States District Court Jury List, Eastern Division, Southern District of Georgia, Revised for May Term, 1897.

A.

Names.	Post-office.	County.
Adler, Leopold	Savannah	Chatham
Appleton, Geo. L	"	"
Allen, David C	"	"
Anderson, R. S	"	"
Armand, Ernest A	"	"
Askew, Walter C	"	"
Archer, G. M	Waycross	Ware
Ashley, C. R	Valdosta	Lowndes
Austin, W. M	Jesup	Wayne
Albritton, C. W	Waynesville	"
Alday, Mathew	Fairchild	Decatur
Alday, G. B	Donaldsville	"
Avera, James W	Quitman	Brooks
Averett, George W	"	"
Austin, George W	"	"
Adams, Wm. H	Savannah	Chatham
Andrews, F. A	"	"
Armstrong, W. D	"	"
Armstrong, J. W	"	"
Anderson, C. G	"	"
Alexander, Robert	Thomasville	Thomas
Averett, D. P	Statesboro	Bulloch

194 B.

Barney, W. M	Jesup	Wayne
Brown, W. R	Brinson	Decatur
Bowen, Robert	Cyrene	"
Brinson, J. H	Brinson	"
Barrineau, S. J	Faceville	"
Bethea, A. B	Fowlston	"
Bell, Jas	Whigham	"
Benton, A. R	Donaldsville	"
Brunsin, Reuben	"	"
Braswell, Kin	Fairchild	"

	Names.	Post-office.	County.
	Bower, Robert E.	Quitman	Brooks
	Busley, Thos. J.	"	"
	Beasley, David A.	"	"
	Beaty, Berrian.	"	"
	Benghill, John.	Isom	"
	Bruce, David A.	"	"
	Bozeman, John D.	Quitman	"
	Brannen, J. G.	Statesboro	Bulloch
	Bunce, J. A.	"	"
	Brewer, Williamson T.	Tuscolas	Effingham
	Brewer, Robert H.	"	"
	Bell, W. R.	Brinson	Decatur
c.	Block, Francis, c.	Savannah	
c.	Bugg, I. H.	"	
c.	Bowens, G. L., c.	"	
c.	Bright, Thomas A., c.	"	
c.	Balin, John, c.	"	
	Branch, H. M.	"	
195	Byck, Max L.	Savannah	
	Besselieu, Thos. E.	"	
	Bourne, W. H.	Porter	Chatham
	Bonfin, Henry G.	"	"
	Bacon, Hol. H.	Savannah	Chatham
	Baker, Marcus S.	"	"
	Barrett, Michael J.	"	"
	Bartlett, Henry.	"	"
	Beck, James L.	"	"
	Berry, James F.	"	"
	Berry, William H.	"	"
	Bevill, Frank B.	"	"
	Black, Edward G.	"	"
	Blois, William F.	"	"
	Byck, Chas. S.	"	"
	Bohan, Wm. M.	"	"
	Bourguin, Guilleman.	"	"
	Breeman, Patrick.	"	"
	Brooks, Jordan F.	"	"
	Bruell, Henry H.	"	"
	Burgess, John E.	"	"
	Bussey, Wm. W.	"	"
	Bent, Wm. M.	"	"
	Bragdon, Rob't K.	"	"
	Black, Henry G.	"	"
	Bradley, W. H.	Waycross	Ware
	Brown, T. L.	"	"
	Bibb, F. W.	"	"
	Brewer, W. H.	Hinesville	Liberty
196	Briggs, James M.	Valdosta	Lowndes
	Briggs, Mat. A.	"	"
	Briggs, H. C.	"	"

Names.	Post-office.	County.
Bentley, R. W.	Valdosta	Lowndes
Black, J. F.	Jesup	Wayne
Bennett, Henry	"	"
Bennett, J. Hamp.	"	"
Bell, Joseph J.	"	"
197	C.	
Carolan, John J.	Savannah	Chatham
Charlton, Ed. T.	"	"
Carswell, John D.	"	"
Cooper, William G.	"	"
Cults, C. A.	"	"
Cannon, Rob't P.	"	"
Carter, Barron	"	"
Cassels, A. Gordon	"	"
Courtney, Richard M.	"	"
Crane, Wm. H.	"	"
Crisfield, J. S. P.	"	"
Cubbedge, Edwin W.	"	"
Cubbedge, Richard W.	"	"
Cummings, John J.	"	"
Cunningham, C. A. L.	"	"
Cunningham, Collolcohn	"	"
Cooley, Martin	"	"
Covington, H. L.	Waycross	Ware
Cason, Jno. P.	"	"
Cason, R. D.	"	"
Childress, P. M.	Valdosta	Lowndes
Callahan, A. J.	Bainbridge	Decatur
Chapman, W. T.	Whigham	"
Carr, R. D.	Donaldsville	"
Crawford, R. H.	Steam Mill	"
Crane, George B.	Quitman	Brooks
Crenshaw, Wm. J.	Tallakas	"
Cassels, R. Frank	McIntosh	Liberty
Chapman, James L.	Johnson Station	"
Chapman, Francis J.	" "	"
Cornelius, J. B.	Hornerville	Clinch
Crumbly, J. S.	Portal	Bulloch
Crawford, James E.	Eden	Effingham
Coleman, J. L.	Statesboro	Bulloch
Cohm, F. M., c.	Savannah	
Clark, Paul, c.	"	
Carter, J. H., c.	"	
Coshin, Benj., c.	"	
198	D.	
Daffin, Wm. S.	Savannah	Chatham
Delaney, Joseph E.	"	"
Demmond, Edward K.	"	"

Names.	Post-office.	County.
Denhardt, William	Savannah	Chatham
Dent, James T	"	"
Dixan, Merritt W	"	"
Dixon, William D	"	"
Deal, Zachariah	Fleming	Liberty
Dasher, J. A., Jr	Valdosta	Lowndes
Dunn, H. T	Brunswick	Glynn
Dunn, F. A	"	"
Douglas, R. V	"	"
Downing, C	"	"
De Lorch, Jack	Quitman	Brooks
Dugger, James H	Ellabelle	Bogar
Delk, Wm. S	Johnson Station	Liberty
Dickerson, Josiah S	Clinch	Clinch
Dame, John T	Hornerville	"
Dame, George M	"	"
Darley, G. S	"	"
Dekle, A. H	Pelham	Decatur
Dasher, Homer R	Guyton	Effingham
Donaldson, R. F., Jr	Statesboro	Bulloch
De Loach, W. H., Jr	"	"
Donaldson, W. P	Blitch	"
Deveraux, John H., c	Savannah	
Dessevnesy, Edw'd E., c	"	
Dunham, F. D., c	"	

E.

Elliott, Ralph	Savannah	Chatham
Ehrlich, Ambrose	"	"
Edmondson, Chas	"	"
Eichberg, Alfred S	"	"
Elliott, Arthur B	"	"
Einsfield, Frederick	"	"
Ellis, Charles, Jr	"	"
Ely, Charles C	"	"
Emery, Joseph F	"	"
Englerth, Joseph T	"	"
Evans, John T	"	"
Emanuel, N	Brunswick	Glynn
Elliott, E. O	"	"
Elkins, Samuel C	Pimora	Effingham
Exley, Chas. N	Exley	"
Erwin, M. A., c	Savannah	
Erwin, W. H., c	"	

199 F.

Flint, Alexander F	Savannah	Chatham
Floyd, James B	"	"
Foley, Michael F	"	"
Falliard, Thomas A	"	"

Names.	Post-office.	County.
Footman, Geo. D.	Savannah	Chatham
Fox, John H.	"	"
Fraser, Donald J.	"	"
Freeman, John F.	"	"
Fripp, William C.	"	"
Fulton, Charles F.	"	"
Furber, James H.	"	"
Fleming, John S.	Walthourville	Liberty
Fleming, P. W.	Brunswick	Glynn
Fuller, Thomas,	"	"
Funderburk, C. L.	Brinson	Decatur
Frieman, S. W.	Donaldsonville	"
Fiveash, S. C.	"	"
Finn, J. L.	Thomasville	Thomas
Futch, M. M.	"	"
Fudge, B. D.	"	"
Fiveash, D. D.	Dupont	Clinch
Fiveash, Wm. J.	"	"
Fay, E. Jackson	Greyton	Effingham
Frevermuth, Chas. E.	Springfield	"
Falcher, J. A.	Statesboro	Bulloch
Fetzer, Robert C.	White Bluff	
Fernber, T. E., c.	Savannah	

G.

Gadsden, Geo. M.	Savannah	Chatham
Gray, Christopher P.	"	"
Goebel, Geo. C.	"	"
Guerard, Augustus G.	"	"
Glover, Augustus M.	"	"
Goebel, P. B.	"	"
Golden, John W.	"	"
Goodwin, Sidney P.	"	"
Gordon, George A.	"	"
Grady, W. Edwin	"	"
Graham, James J.	"	"
Graham, Joseph L.	"	"
Grayson, William L.	"	"
Girmon, Diedrich	"	"
Grass, James A.	"	"
Grover, Solomon.	Scriven	Wayne
Guinn, L. E.	Brunswick	Glynn
Griffen, Pleasant D.	Hoboken	Pierce
Gag, John W.	Lanier	Bryan
Gag, Daniel J.	"	"
Gill, John B.	Rodney	"
Gill, William W.	"	"
Graffins, W. J.	Pearson	Clinch
Gibson, J. T.	Dupont	"

Names.	Post-office.	County.
Geter, W. S.	Savannah	
Giles, Philip Y., c.	"	
Gardner, Jacob	Savannah	
200 H.		
Hopkins, W. Trenholm	Savannah	Chatham
Howard, C. Wallace	"	"
Hudson, J. A.	"	"
Hager, John W.	"	"
Hager, T. Pinckney	"	"
Hull, Henry H.	"	"
Hull, Robert M.	"	"
Hunter, Wright	"	"
Hulton, John A.	"	"
Halligan, Thomas	"	"
Harris, George S.	"	"
Harman, Abram W.	"	"
Haskell, Lewis W.	"	"
Hagan, John M.	"	"
Harmon, Adam C.	"	"
Hexter, Swain	"	"
Hobersham, Ed. M.	"	"
Haile, John C.	"	"
Harder, James G.	"	"
Hopp, R. B.	Jesup	Wayne
Hendry, George N.	"	"
Herron, Aaron	Lalaton	"
Herron, W. H.	Lalaton	"
Hatcher, J. C., Snr.	Mt. Pleasant	"
Huntington, H.	"	"
Hodges, Laurence	Egypt	Effingham
Hodges, Washington P.	Walthourville	Liberty
Harden, John L.	Brunswick	Glynn
Hopkins, R. R.	Brunswick	Glynn
Henderson, James	Blackshear	Pierce
Hughes, T. D.	"	"
Hambleton, W. B.	Thomasville	Thomas
Hicks, R. L.	"	"
Hayes, S. L.	"	"
Heeth, P. S.	"	"
Haskill, Paul T.	Ways Station	Bryan
Harris, Israel S.	Clyde	"
Hagins, W. A.	Mill Ray	Bulloch
Holland, E. D.	Statesboro	"
Hawks, C. S.	Quitman	Brooks
Hughes, James H.	Dupont	Clinch
Haxford, W. H.	Homerville	"
Hughes, Jeptha	Dupont	"
Heidt, Daniel G.	Savannah	
Hughes, C. H.	Dupont	Clinch

Names.	Post-office.	County.
Habersham, J. C., c	Savannah	
Habersham, John W., c	"	
Hernandez, Robert H., c	"	
Hendry, Norman C	Valdosta	Lowndes
201	I.	
Inglesby, Charles	Savannah	Chatham
Irvin, Thomas B	"	"
Isey, H. W	Thomasville	Thomas
	J.	
Jones, B. F	Lalaton	Wayne
Johns, Jeremiah J	"	"
Jackson, W. A	Jesup	"
Joyner, Joseph E	"	"
Jones, George P	Guyton	Effingham
Johnson, J. B	Fairchild	Decatur
Jones, S. A	Thomasville	Thomas
Jerger, L. H	"	"
Jones, M. B	"	"
Johnson, J. M	Blackshear	Pierce
Johnson, Sol. C., c	Savannah	
Jones, F. T., c	"	
Jackson, Albert, c	"	
Jones, J. F., c	"	
Jordan, C. G., c	"	
	K.	
Kick, Thomas P	Savannah	Chatham
Kehoe, William	"	"
Kelley, Augustus H	"	"
Kelly, Laurence	"	"
Ketchum, Wm. A	"	"
Kiernan, Patrick A	"	"
King, Alfred F	"	"
King, Mitchell	"	"
Kirby, John J	"	"
Kollock, M. C	"	"
Kolsborn, Fred	"	"
Kops, J. de Bruyn	"	"
Kops, W. de Bruyn	"	"
Kayton, Lewis	"	"
Kedundy, E. J	"	"
King, J. C	"	"
Kicklighter, A. C	Scriver	Wayne
Knox, James, Jr	Waycross	Ware
Knight, J. R	"	"
Killer, D. L	Brunswick	Glynn
King, H. M	"	"
Kaiser, M	"	"

Names.	Post-office.	County.
Knox, John F	Blackshear	Pierce
Keller, John A	Clyde	Bryan
Kelley, D. W	Cairo	Decatur
Kennedy, M. J	Excelsior	Bulloch
202 L.		
Lebey, D. V	Savannah	Chatham
Lefler, Adolph M	"	"
Le Hardy, Louis M	"	"
Lehwald, Henry	"	"
Leopold, Wm. T	"	"
Levy, Henry	"	"
Lewis, James F	"	"
Livingston, H. H	"	"
Lockwood, B. P	"	"
Logan, Hugh	"	"
Lucas, Arthur M	"	"
Lynch, Paul H	"	"
Littlefield, O. F	Jesup	Wayne
Leigh, J. W	Waycross	Ware
Latt, Joel	"	"
Lee, W. P	"	"
Lane, D. W	Brinson	Decatur
Lewis, Geo. B., c	Savannah	
Lears, C. A., c	"	
Ladereze, C. A., c	"	
Logan, W. G., c	"	
M and Mc.		
McAlpin, J. W., Jr	Savannah	Chatham
McCarthey, L. A	"	"
McCullom, W. E	"	"
McFadden, H. C	"	"
McFarland, Jos. W	"	"
McIntyre, Jas. W	"	"
McCauley, W. F	"	"
McDonough, Jno. J	"	"
McGrath, James	"	"
Marshall, F. H	"	"
Moore, A. B	"	"
Morgan, H. C	"	"
Morse, Frank H	"	"
Myers, Herman	"	"
Mohr, Anson	"	"
Morrison, James L	"	"
Miller, W. Freeman	"	"
Miltin, C. D	"	"
Miscally, W. J., Jr	"	"
Morel, Calhoun T	"	"
Morrissy, Michael A	"	"

	Names.	Post-office.	County.
	Motte, John W	Savannah	Chatham
	Moyn, Albert	"	"
	Mumford, Sam'l L	"	"
	Murphy, James L	"	"
	Murray, Frank J	"	"
	Mustin, Chas. E	"	"
203	McEachern, John P	Marlow	Effingham
	McNeill, Lawrence	"	"
	Mattox, Jackson L	Mildrom	"
	Morgan, Sam'l H	Greyton	"
	Mallory, Robert P	Clyo	"
	McKey, Thos. S	Valdosta	Lowndes
	Miller, S. F	Way Station	Ware
	McCally, W. W	"	"
	Mallon, J. W	"	"
	Mallon, W. R	"	"
	Morton, T. H	"	"
	Marshall, S. A	"	"
	Morgan, A. H	"	"
	McGee, D. A	"	"
	Metsgar, Oscar E	Clyo	Effingham
	Mingledorf, Elliott F	Springfield	"
	McRee, William	Valdosta	Lowndes
	Maxwell, Carlin C	Waycross	Bryan
	Moore, Thos. B	Belknap	"
	Morgan, John D	Savannah	"
	Morrison, John	Ellabelle	"
	Miller, Wm	Thomasville	Thomas
	McIntyre, W. R	"	"
	McDowell, A. G., c	Savannah	
	Magner, Richard, c	"	
	Morse, Sam'l B., c	"	
	McFall, S. S., c	"	
	Middleton, James, c	"	
	Milledge, G. M., c	"	
	Morgan, Benj. F	Kingsville	Chatham
	Mager, David W	Montgomery	"
	Meyres, Austin R	Savannah	"

N.

	Nooman, Jno. C	Waltonville	Liberty
	Nesmith, M. N	Pelham	Decatur
	Nichols, Fenwick T	Savannah	

O.

	O'Byrne, R. C	Savannah	Chatham
	O'Connor, E. H	"	"
	O'Donnell, Thos. F	"	"
	O'Neill, John J	"	"
	Oakman, R. R	"	"

Names.	Post-office.	County.
Oelschig, S. C.	Savannah	Chatham
Offult, William C.	"	"
Ott, W. P.	"	"

204 P.

Palmer, Armin B.	Savannah	Chatham
Popy, Frank B.	"	"
Pritchard, Geo. B.	"	"
Parrish, Geo. W.	"	"
Paulsen, Nicholas (dead)	"	"
Penton, George O.	"	"
Perry, Eldridge M.	"	"
Polk, Robert H.	"	"
Pendleton, A. S.	Valdosta	Lowndes
Parrish, A. A.	"	"
Paine, C. H.	"	"
Passmore, J. A. B.	Mineola	"
Pearson, A. S.	Avant	Pierce
Parratt, J. C.	Brinson	Decatur
Powell, W. G.	Cyrene	"
Parker, Jas. E.	Johnson Station	Liberty
Park, Linton S., c	Savannah	

R.

Rockwell, R. L.	Savannah	Chatham
Rankin, James L.	"	"
Rebarer, Frank	"	"
Richardson, W. L.	"	"
Richmond, C. A.	"	"
Riley, John	"	"
Rivers, Horace	"	"
Robertson, Jno. G.	"	"
Robinson, W. A.	"	"
Rose, William H.	"	"
Ross, Sam	"	"
Rowland, John F.	"	"
Rowland, John T.	"	"
Reiser, Daniel E.	Clyo	Effingham
Roberts, Zeafh B	Blackshear	Pierce
Reynolds, James M.	"	"
Roach, Geo. S.	Johnson Station	Liberty
Ramsey, C. H.	Quitman	Brooks
Roberts, L. E.	Okapilco	"
Roberts, Hezekiah	"	"
Ryall, Chas. W.	Isom	"
Ragall, W. H., c	Savannah	
Roberts, E. B., c	"	
Rennair, Alex., c	"	

205 S.

Names.	Post-office.	County.
Shotter, Spencer P.	Savannah	Chatham
Shuptim, James T.	"	"
Silverberg, Isadore	"	"
Snedeker, C. N.	"	"
Southcolt, B. D.	"	"
Springer, Peter B.	"	"
Stillwell, C. B.	"	"
Storer, Frank W.	"	"
Strohbar, W. G.	"	"
Stuts, Chas. E.	"	"
Sutcliffe, Henry J.	"	"
Swanston, John J.	"	"
Swanston, Walter E	"	"
Snell, M. P.	Jesup	Wayne
Smith, S. B.	"	"
Smith, John G.	"	"
Stripling, A. W.	"	"
Smith, E. M.	Thomsonville	Thomas
Shearouse, Barton K.	Springfield	Effingham
Shearouse, John N.	Guyton	"
Shave, Thos. J.	Fleming	Liberty
Saunders, J. R.	Valdosta	Lowndes
Staten, James L.	"	"
Strickland, B. F.	"	"
Sarat, Thos. N.	Blackshear	Pierce
Smith, Lyman	Homerville	Clinch
Simons, B. J.	Dupont	"
Sernams, L. A.	"	"
Solomons, H. J.	Homerville	"
Saunders, J. T.	Fairchild	Decatur
Stewart, Wm. F.	Johnson Station	Liberty
Smith, Milton M.	"	"
Shim, Robert J.	Quitman	Brooks
Stanley, Jno. G.	"	"
Stansel, Geo. W.	"	"
Sernams, J. W.	Dupont	Clinch
Strickland, Louis.	Valdosta	Lowndes
Snud, John, c.	Savannah	
Styles, W. H., c.	"	
Scarboro, Joseph, c.	"	
Smalls, L. A., c.	"	
Sykes, W. H., c.	"	
Shiftall, J. B., c.	"	
Stephens, E. A., c.	"	
Savage, John D., c.	"	
Smith, J. Arthur, c.	"	
Stokes, A. L.	"	
Stewart, S. C.	"	
Strack, Herman W.	Thunderbolt	Chatham

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Names.	Post-office.	County.
Tatem, Robert H.	Savannah	Chatham
Tiedeman, Geo. W.	"	"
Theus, Simeon E.	"	"
Tyre, George	Jesup	Wayne
Tyre, John A.	"	"
Thompson, R. A.	"	"
Triplitt, John	Thomasville	Thomas
Thomas, R.	"	"
Thomas, Banner M.	Hoboken	Pierce
Taylor, George W.	Blackshear	Pierce
Touchton, Jesse C.	Stockton	Clinch
Tomlinson, Staten B.	"	"
Tomlinson, Harris A.	"	"
Tomlinson, Joseph B.	Dupont	"
Touchton, Henry	"	"
Tomlinson, Joseph R.	"	"
Tomlinson, Duncan V.	"	"
Thomas, F. A.	Iron City	Decatur
Talbert, J. D.	Brinson	
Troatman, Claude H.	Quitman	Brooks
Tarna, Henry	"	"
Thomas, E. L.	Valdosta	Lowndes
Taberty, Patrick	Savannah	
Thomson, F. Henry	Isle of Hope	Chatham
Thigpen, W. R.	" "	"
Thomas, R. H.	Savannah	

U.

Underwood, Joseph B.	Quitman	Brooks

V.

Varn, J. B.	Valdosta	Lowndes

W.

	Williams, G. W.	Jesup	Wayne
	Wilkins, J. R.	"	"
	Wilkins, W. T.	"	"
	Wilkins, T. S.	"	"
	Whaley, H. W.	"	"
	Whaley, W. H.	"	"
	Watt, James	Thomasville	Thomas
	Wight, J. B.	Cairo	"
	Williams, B. H.	Waycross	Ware
	Wilson, H. W.	"	"
	Wilson, W. M.	"	"
207	Wisenbaker, J. Z.	Valdosta	Lowndes
	Warren, S. J.	Brinson	Decatur

Names.	Post-office.	County.
Wood, A. V	Brunswick	Glynn
Ward, John A	"	"
Wrench, T. A	"	"
Wright, J. S	"	"
Winn, Abul F	Dorchester	Liberty
Williams, K. H	Quitman	Brooks
Wade, Milton C	"	"
Williams, Edward A., c	Savannah	
Wilson, S. A., c	"	
White, Robert, c	"	

Y.

Young, H. M	Mincola	Lowndes
Youmans, George R	Waycross	Ware
Youmans, John	"	"
Young, F. M	"	"
Youmans, S. L	Blackshear	Pierce
Young, John R	Savannah	

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia, } ss:

I, H. H. King, clerk of the district court of the United States of America, for the southern district of Georgia, do hereby certify that the writing annexed to this certificate is a true copy of its respective original now on file, and remaining on record in my office, to wit: United States district court jury book, eastern division, southern district of Georgia, revised for May term, 1897, under order of court, dated January 26, 1897.

In witness whereof, I have caused the seal of the said circuit court to be hereunto affixed, at the city of Savannah, in the southern district of Georgia, this 27th day of October, in the year of our Lord, one thousand nine hundred (1900) and of the Independence of the United States, the one hundred and twenty-fifth.

[SEAL.] H. H. KING, *Clerk.*

208 Q. I think you have already stated—if I am wrong correct me—that all the names on the tickets were entered in this book?

A. Yes sir.

Q. How many names were there?

A. 562.

Q. What was done with those tickets?

A. I made them out myself and put them in the box; Mr. Elliott and myself.

Q. Mr. Elliott and yourself put them in the what box?

A. In the district court jury-box.

Q. In the district court jury-box; when was that?

A. I have not got the date. It was about the 1st of April.

Q. What year?

A. 1897.

Q. At the time that was done who was present?

A. Mr. King the clerk.

Q. And who else?

A. Mr. Elliott and myself.

Q. And yourself. In putting them in how did you put them in; tell us what was done with reference to that?

A. Well, I made them out on typewritten paper in two columns; I cut them this way and cut them that way and folded them. (Indicating.)

209 Q. That made the tickets?

A. That made the tickets. Mr. Elliott and I put them in alternately; he would put in some and I would put in some others.

Q. You mean he would put in a bundle?

A. He would put in a bunch as I folded them, and I would put in a bunch as I folded them. They were made out on typewritten paper with space between down this side of the sheet and down the other side, and cut in two, then cut crosswise and then folded once.

Q. When folded the names could not be seen?

A. No sir.

Q. Mr. King was present during all this time while you were doing this?

A. While we were putting them in the box.

Q. Did he put any in the box himself?

A. No sir; Mr. Elliott and I did it myself. Mr. King supervised it.

Q. Mr. King was not sick or disabled?

A. Oh, no. He was simply sitting there present. He turned the work over to me of course.

Q. But he was present in the room all the time?

A. He was in the room.

Q. And you cut up a few sheets of these and folded them?

A. Yes sir.

Q. And Mr. Elliott would cut up a few sheets of them and fold the tickets?

A. Yes.

Q. And then you would put in the bunch you had folded and he would put in the bunch he folded?

210 A. About half the tickets I made myself on the typewriter. The other half were made by Mr. Elliott's clerk, and I am not positive but I am very sure that Mr. Elliott cut up his own tickets; but I know that I cut up mine.

Q. You put in the tickets that you had made?

A. Yes sir.

Q. And he put in the tickets that he had made?

A. No, not necessarily. They were all there on the desk and folded and they were copied in the original of that book before they were cut apart from these sheets.

Q. Now did you put in one ticket alone, a single ticket, and then Mr. Elliott following you put in another one?

A. No sir.

Q. And then you put in a third?

A. No.

Q. And he put in the fourth, and so on until they were all put in?

A. No sir; they were bundled up until we got a pile of them and then we put them in the box together.

Q. Now from that time until the 1st of January 1900, was there any other revision of the jury-box for the eastern division of the southern district of Georgia?

A. No sir.

Q. That was the last and only one that was ever made by Mr. Elliott?

A. Yes sir.

Q. First and last and only one?

A. Yes sir.

Q. Prior to the 22nd day of November 1899, was there
211 any order made by the district court for the southern district of Georgia with reference to the jury-box in relation to putting names into or revising it?

A. No, sir.

Q. Will you be kind enough to tell me how many names there were of the 562 put in that box—that being the total number as I understand—how many names there were of persons from the county of Chatham?

A. I have not the memorandum here. I made a statement to that effect.

Q. You sent me a memorandum?

A. Yes sir; I made a statement.

Q. (Paper handed witness.) Is that it?

A. 291 from Chatham county.

Q. And how many from the county of Glynn?

A. 14.

Q. That makes a total of how many from those two counties?

A. 305.

Q. The total number in the box was how many?

A. 562.

Q. And from the 12 other counties of that division, other than Chatham and Glynn, how many names were put in this box in 1897?

A. 257.

Q. Mr. Gillespie, after the revision of this box when was the first jury for the district court for the southern district of Georgia, eastern division, drawn?

A. July 3rd, 1897. That is, for the grand jury, and also the same date for the traverse jury.

Q. The traverse or petit jury?

A. Yes sir.

Q. Have you here, copied from the original records of the
212 district court, of which you are deputy clerk, copies of these venires, or those drawings?
A. Yes sir.
Q. Will you let me have that; the first jury?
A. That is the first one, (producing paper).
Q. These copies are made by you and they are correct?
A. Yes sir; they were not made by me personally.
Q. You have compared them?
A. I have compared them and can swear that they are correct.

Mr. ROSE: I offer these two papers in evidence, being the venires for the grand and traverse jury drawn for the eastern division of the southern district of Georgia, both dated July 3rd 1897.

Mr. ERWIN: I desire to ask Mr. Gillespie a question or two on this.

(By Mr. ERWIN:)

Q. Mr. Gillespie, I see some corrections on these copies, one place the name E. D. Whittier written in typewriter is changed in ink to E. D. Miltier?
A. Miltier is the proper name.
Q. Is that correction made by you?
A. Yes, sir; the original was Miltier.
Q. Another place where the typewriter has got Zachana Deal; that is changed to Zachariah?
A. Zachariah Deal.
Q. Is that correction made by you?
A. Yes sir; I knew the man.

Q. These mistakes that you have corrected were made
213 by the typewriter in copying them?
A. Yes sir.
Q. And are correct now as it stands?
A. Yes sir; correct with the original.

Mr. ERWIN: I object to these on the same grounds as the general line of testimony he is entering upon, and second, because the testimony is irrelevant and immaterial.

Objection overruled.

Ex. M 5. S. H. Nov. 8, 1900.

In the District Court of the United States for the Eastern Division of the Southern District of Georgia, May Term.

In re THE GRAND JURY.

Names of Persons Drawn in Open Court to Serve as Grand Jurors in said District Court at the May Term, 1897.

1	E. M. Smith,	Thomasville,	Ga.	Thomas	county.
2	William T. Leopold,	Savannah,	"	Chatham	"
3	John T. Rowland,	Savannah,	"		
4	J. C. Hatcher, Sr.,	Mt. Pleasant,	"		
5	R. R. Oakman,	Savannah,	"	Chatham	"
6	A. C. McDonell, (c.)	Savannah,	"	"	"
7	Abram W. Harmon,	Savannah,	"	"	"
8	J. L. Jones, (c.)	Savannah,	"	"	"
9	John F. Freeman,	Savannah,	"	"	"
10	E. D. Miltier,	Savannah,	"	"	"
11	H. T. Dunn,	Brunswick,	"	Glynn	"

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12	William C. Frippe,	Savannah,	Ga.	Chatham	county.
13	H. J. Solomons,	Homerville,	"	Clinch	"
14	W. E. McCallum,	Savannah,	"	Chatham	"
15	Lawrence Kelly,	Savannah,	"	Chatham	"
16	W. C. MacIntyre,	Thomasville,	"	Thomas	"
17	Zachariah Deal,	Fleming,	"	Liberty	"
18	Walter C. Askew,	Savannah,	"	Chatham	"
19	R. H. Crawford,	Steam Mill,	"	Decatur	"
20	Calhoun T. Morrell,	Savannah,	"	Chatham	"
21	G. S. Darley,	Homerville,	"	Clinch	"
22	Francis H. Marshal,	Savannah,	"	Chatham	"
23	Samuel H. Morgan,	Guyton,	"	Effingham	"
24	N. M. Fitch,	Thomasville,	"	Thomas	"
25	T. E. Ferrebee, (c.)	Savannah,	"	Chatham	"
26	Edward A. Williams. (c.)	"	"	Chatham	"
27	W. G. Powell,	Cyrene,	"	Decatur	"
28	James Knox, Jr.,	Waycross,	"	Ware	"

EMORY SPEER,
U. S. Judge.

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G.

JOHN M. BARNES,
U. S. Marshal.

In the presence of
L. M. ERWIN,
Deputy Clerk.

Order for Venire.

In re SAME.

It is ordered by the court that the clerk issue a writ of *venire facias*, directing the marshal of the United States to summon the per-
215 sons whose names were drawn in open court this — day of July 1897, on the panel hereto annexed, to be and appear personally at the United States court-room in the city of Savannah, Georgia, on the 14th day of July A. D. 1897, at 10 o'clock in the forenoon of said day, then and there to be empaneled and sworn as grand jurors to serve in a district court of the United States for said division, then and there to be holden.

In open court this 3rd day of July A. D. 1897.

EMORY SPEER,
U. S. Judge.

d. 433 G.

Ex. N 5. S. H. Nov. 8, 1900.

In the District Court of the United States for the Eastern Division of the Southern District of Georgia, May Term, 1897.

In re THE TRAVERS JURY.

Names of Persons Drawn in Open Court to Serve as Travers Jurors in said District Court at the May Term, 1897.

1	William McRee,	Lowndes county.
2	W. R. Mallon,	Ware "
3	Cornelius V. Snedeker,	Chatham "
4	Duncan V. Tomlinson,	Clinch "
5	D. D. Fiveach,	Clinch "
6	Milton M. Smith,	Liberty "
7	Henry Turner,	Brooks "
8	Willard C. Offutt,	Chatham "

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9	W. L. Richardson,	Chatham county.
10	C. H. Ramsey,	Brooks "
11	Statin B. Tomlinson,	Clinch "
12	A. L. Stokes,	Chatham "
13	W. H. Bourne,	Chatham "
14	Henry G. Buford,	Chatham "
15	Joseph E. De Lancy,	Chatham "
16	F. M. Young,	Ware "

EMORY SPEER,
U. S. Judge.

JOHN M. BARNES,
U. S. Marshal.

In the presence of
CECIL MORGAN,
Deputy Clerk.

G.

In re SAME.

Order for Venire.

It is ordered by the court that the clerk issue a writ of *venire facias*, directing the marshal of the United States to summon the persons who- names were drawn in open court this 3rd day of July 1897, on the panel hereto annexed, to be and appear personally at the United States court-room in the city of Savannah, Georgia on the 14th day of July 1897 A. D. *1897* at 10 o'clock a. m., then and there to be empaneled and sworn as travers jurors to serve in the district court of the United States for said division, then and there to be holden.

In open court this 3rd day of July A. D. 1897.

EMORY SPEER,
U. S. Judge.

D. C. 434.

217 (By Mr. ROSE:)

Q. Mr. Gillespie, tell us how many grand jurors were drawn from this box, as appears by Exhibit "M 5," in July 1897?

A. 28.

Q. How many of them were from Chatham and Glynn counties respectively?

A. 15 from Chatham and 1 from Glynn.

Q. How many trial jurors were there drawn at the same time, as appears by Exhibit "N 5,"

A. Fifteen.

Q. How many from Chatham and Glynn respectively?

A. Seven from Chatham and none from Glynn.

Q. Now you have stated that there was 15 from Chatham and one from Glynn in the grand jury. How many from the other counties; 12, isn't it?

A. Yes sir, 12.

Q. And 7 from Chatham county out of the sixteen would leave nine from the other counties?

A. Yes sir.

Q. When was the next grand jury drawn for the eastern division; the next jury drawn?

A. Drawn February 23rd 1898, returnable March 3rd, 1898.

Q. Grand and petit both?

A. Yes sir; at the same time. No sir; beg pardon. The travers jury was drawn on February 23rd, returnable March 1st.

Q. I don't care about the return day. How many grand jurors were drawn?

A. Thirty.

Q. How many of those from Chatham and how many from Glynn counties?

A. Thirteen.

Q. Thirteen from Chatham?

A. Yes sir.

Q. How many from Glynn?
A. None.
218 Q. That would leave 17 from the other counties?
A. Seventeen, yes sir.
Q. How many trial jurors were drawn?
A. Nineteen.
Q. How many from Chatham and how many from Glynn?
A. Five from Chatham and none from Glynn.
Q. That would be fourteen from the other counties, being 5 from nineteen?
A. 14, yes sir.
Q. These two papers being copies of venires, are made by you or compared by you, and they are correct, are they?
A. Yes sir.
Q. The changes that appear to be made in ink, are changes made by you on comparison, the typewriting having been a mistake?
A. Yes sir.

Mr. ROSE: I offer those two papers in evidence.
Mr. ERWIN: The same objection to the general line of testimony and also to the admissibility of the papers for irrelevancy and immateriality.
Objection overruled. Exception taken.

Ex. O 5. S. H. Nov. 8th, 1900.

In the District Court of the United States for the Eastern Division, Southern District of Georgia, February Term, 1898.

In re THE GRAND JURY.

Names of Persons Drawn in Open Court to Serve as Grand Jurors in said District Court at the February Term, 1898.

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1	Joseph P. Tomlinson,	Du Pont,	Clinch	county.
2	George P. Jones,	Gayton,	Effingham	"
3	James F. Lewis,	Savannah,	Chatham	"
4	J. W. Simons,	Du Pont,	Clinch	"
5	James Bell,	Whigham,	Decatur	"
6	George B. Lewis,		Chatham	"
7	C. H. Hughes,	Du Pont,	Clinch	"
8	Frank H. Morse,	Savannah,	Chatham	"
9	J. H. Deveaux (c.)	Savannah,	Chatham	"
10	S. J. Warren,	Brinson,	Decatur	"
11	Nicholas Paulsen,	Savannah,	Chatham	"
12	Henry H. Hull,	Savannah,	Chatham	"
13	John T. Evans,	Savannah,	Chatham	"
14	G. M. Archer,	Waycross,	Ware	"
15	Frank B. Bevill,		Chatham	"
16	Norman C. Hendry,	Valdosta,	Lowndes	"
17	Wm. M. Bohan,	Savannah,	Chatham	"

18	Robert Hernandez (c.)	Savannah,	Chatham	"
19	Wm. L. Grayson,	Savannah,	Chatham	"
20	W. W. McCully,	Waycross,	Ware	"
	G			
21	James M. Briggs,	Valdosta,	Lowndes	"
22	George W. Taylor,	Blackshear,	Pierce	"
23	Wm. H. Adams,		Chatham	"
24	A. Gordon Cassels,		Chatham	"
25	W. M. Austin,	Jessup,	Wayne	"
26	C. L. Funderbunk,	Brinson,	Decatur	
27	A. S. Pearson,	Avant,	Pierce	"
28	W. R. Brown,	Brinson,	Decatur	"

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29	Joseph E. Joyner,	Jessup,	Wayne	county.
30	John S. Fleming,	Walthourville,	Liberty	"

EMORY SPEER,
U. S. Judge.

R. D. LOCKE,
Deputy Marshal.

In the presence of
L. M. ERWIN,
Deputy Clerk.

In re SAME.

Order for Venire.

It is ordered by the court that the clerk issue a writ of *venire facias*, directing the marshal of the United States to summon the persons whose names were drawn in open court this — day of February 1898, on the panel hereto annexed, to be and appear personally at the United States court-room in the city of Savannah, Georgia, on the third day of March A. D. 1898, at 9 o'clock in the forenoon of said day, then and there to be empaneled and sworn as grand jurors to serve in a G district court of the United States for said division, then and there to be holden.

In open court Feb'y 23rd 1898.

EMORY SPEER,
U. S. Judge.

Ent. D. C., 470, 471.

UNITED STATES OF AMERICA,
For Eastern Division of the Southern District of Georgia.

The President of the United States to the marshal of the
221 United States for the southern district of Georgia, Greeting:

You are hereby commanded to summon the several persons named in the panel hereto annexed, personally — be and appear at a

district court of the United States for the eastern division of the southern district of Georgia, to be holden in the United States court-room in the city of Savannah, Georgia, in and for said division and district on the third day of March, A. D. 1898, at 9 o'clock in the forenoon of that day, then and there to be empaneled and sworn as grand jurors, to serve at the February term 1898 of said district court.

And have you then and there this writ, with your proceedings endorsed thereon.

L. S. of the Court. (Seal.) Witness the Honorable Emory Speer, judge of the district court of the United States, at Macon, this the 23rd day of February A. D. 1898.

L. M. ERWIN,
Deputy Clerk.

G.

(Endorsed:) Marshal's No. 451: In the district court of the United States for the eastern division of the southern district of Georgia: *In re* the grand jury: *Venire facias* for February term 1898: Issued Feb'y 23 1898. Returnable March 3rd 1898: Returned by marshal and filed this 3rd day of March 1898. S. F. B. Gillespie, dep. clerk: G.

222 Ex. P 5. S. H.

In the District Court of the United States for the Eastern Division, Southern District of Georgia, February Term, 1898.

In re THE TRAVERS JURY.

Names of Persons Drawn in Open Court to Serve as Travers Jurors in said District Court at the February Term, 1898.

1	Daniel C. Newton,	Savannah,	Chatham county.
2	John F. La Far,	Savannah,	Chatham "
3	G. B. Trulock,	Whigham,	Decatur "
4	William F. Train,	Whigham,	Decatur "
5	Wm. C. Workman,	Whigham,	Decatur "
6	Joseph Hull,	Whigham,	Decatur "
7	Walter D. Thomas,	Whigham,	Decatur "
8	W. R. Causey,	Jessup,	Wayne "
9	Thos. J. Holt,	Savannah,	Chatham "
10	James Brown,	Blackshear,	Pierce "
11	Clinton D. Groover,	Quitman,	Brooks "
12	S. C. Allen,	Statesboro,	Bulloch "
13	T. W. Faircloth,	Sofkey,	Decatur "
14	Walter T. Lane,	Valdosta,	Lowndes "
15	Harry S. Dreese,	Savannah,	Chatham "
16	J. H. Davidson,	Thomasville,	Thomas "
17	F. C. Owens,	Waycross,	Ware "

18 Andrew T. Kelly, Savannah, Chatham "
19 P. G. Brinson, Iron City, Decatur "

EMORY SPEER,
U. S. Judge.

R. D. LOCKE.

223 In the presence of
L. M. ERWIN,
Deputy Clerk.

G.

In re SAME.

Order for Venire.

It is ordered by the court that the clerk issue a writ of *venire facias*, directing the marshal of the United States to summons the persons whose names were drawn in open court this 23rd day of February 1898, on the panel hereto annexed, to be and appear personally at the United States court-room in the city of Savannah, Georgia, on the first day of March A. D. 1898, at 9 o'clock in the forenoon of said day, then and there to be empaneled and sworn as travers jurors to serve in a district court of the United States *court of the United States* for said division, then and there to be holden.

In open court Feb'y 23rd 1898.

EMORY SPEER,
U. S. Judge.

UNITED STATES OF AMERICA,
For Eastern Division of the Southern District of Georgia.

The President of the United States to the marshal of the United States for the southern district of Georgia, Greeting:

224 You are hereby commanded to summon the several persons named in the panel hereto annexed, personally to be and appear at a district court of the United States for the eastern division of the southern district of Georgia, to be holden in the United States court-room in the city of Savannah, Georgia, in and for said division and district on the first day of (being the — day) *in* March A. D. 1898, at 9 o'clock in the forenoon of that day, then and there to be empaneled and sworn as travers jurors, to serve at the —— term 189– of said district court.

And have you then and there this writ, with your proceedings endorsed thereon.

Witness the Honorable Emory Speer, judge of the district court of the United States, at Macon, this the 23rd day of February A. D. 1898.

[L. S.]
[SEAL.]

LENOIR M. ERWIN,
Deputy Clerk.

G.

(Endorsed:) No. 4 in the district court of the United States for the eastern division of the southern district of Georgia: *In re* the

travers jury: *Venire facias* for February term 1898: Issued Feb'y 23rd 1898. Returnable March 1st 1898: Returned by marshal and filed this 1st day of March 1898. S. F. B. Gillespie, dep'y clerk.

G.

225 Q. When was the next grand and petit jury, or both, drawn for the eastern division?

A. January 4th 1899.

Q. Grand and petit both?

A. Yes sir.

Q. Have you copies of the venires there?

A. Yes sir.

Q. Are those copies compared by you with the originals?

A. Yes sir.

Q. And they are correct?

A. Yes sir.

Mr. Rose: I offer them in evidence.

Same objection, ruling and exception.

Ex. Q 5. S. H. Nov. 8, 1900.

In the District Court of the United States for Eastern Division, Southern District of Georgia, November Term, 1898.

In re The Grand Jury.

Names of Persons Drawn in Open Court to Serve as Jurors in said Court at the November Term, 1898.

1	J. A. Fulcher,	Statesboro,	Bulloch county.
2	Benjamin F. Lockwood,	Savannah,	Chatham "
3	D. V. Levy,	Savannah,	Chatham "
4	John C. Haile,	Savannah,	Chatham "
5	George C. Goebel,	Savannah,	Chatham "
6	B. D. Southcott,	Savannah,	Chatham "
7	David C. Allen,	Savannah,	Chatham "
8	B. J. Simans,	Du Pont,	Clinch "

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9	F. M. Young,	Waycross,	Ware county.
10	Joseph B. Tomlinson,	Du Pont,	Clinch "
11	David A. Bruce,	Isom,	Brooks "
12	Charles E. Fryermuth,	Springfield,	Effingham "
13	Patrick Tuberdy,	Savannah,	Chatham "
14	John G. Smith,	Jessup,	Wayne "
15	Thomas J. Shone,	Fleming,	Liberty, "
16	Joseph J. Bell,	Jessup,	Wayne "
17	Robert P. Mallery,	Clyo,	Effingham "
18	J. W. Mallon,	Waycross,	Ware "
19	Geo. L. Appleton,	Savannah,	Chatham "
20	Charles Ellis, Jr.,	Savannah,	Chatham "

21 O. F. Littlefield,	Jessup,	Wayne	"
22 Alexander F. Flint,	Savannah,	Chatham	"
23 C. Malcolm Cunningham,	Savannah,	Chatham	"
24 Wm. H. Berry,	Savannah,	Chatham	"
25 John F. Know,	Blackshear,	Pierce	"
26 M. Kiser,	Brunswick,	Glynn	"
27 Y. M. Milledge,	Savannah,	Chatham	"
28 B. F. Jones,	Lulaton,	Wayne	"
29 Geo. S. Roach,	Johnson Station,	Liberty	"
30 Berrien Beaty,	Quitman,	Brooks	"

EMORY SPEER,
U. S. Judge.

In the presence of—
L. M. ERWIN,
Deputy Clerk.
R. D. LOCKE,
Chief Office, Dep. Marshal.

227 *In re* SAME.

Order for Venire.

It is ordered by the court that the clerk issue a writ of *venire facias*, directing the marshal of the United States to summon the persons whose names were drawn in open court this 4th day of January 1899, on the panel hereto annexed, to be and appear personally at the United States court-room in the city of Savannah, Georgia, on the tenth day of January A. D. 1899, at 9 o'clock in the forenoon of said day, then and there to be empaneled and sworn as grand jurors to serve in a district court of the United States for said division, then and there to be holden.

In open court January 4th 1899.

EMORY SPEER,
U. S. Judge.

G.

UNITED STATES OF AMERICA, }
Eastern Division of the Southern District of Georgia. }

The President of the United States to the marshal of the United States for the southern district of Georgia, Greeting:

You are hereby commanded to summon the several persons named in the panel hereto annexed, personally to be and appear at a district court of the United States for the eastern division of the southern district of Georgia to be holden in the United States court-
228 room in the city of Savannah, Georgia, in and for said division and district, on the second Tuesday (being the tenth day) in January A. D. 1899, at 9 o'clock in the forenoon of said day, then and there to be empaneled and sworn as grand jurors, to serve at the November term 1899 of said district court.

And have you then and there this writ, with your proceedings endorsed thereon.

(L. S. of the Court.) U. S.

Witness the Honorable Emory Speer, judge of the district court of the United States, at Savannah, in said division and district, this the fourth day of January, A. D. 1899.

L. M. ERWIN,
Deputy Clerk.

(Endorsed:) No. 5 In the district court of the United States for the eastern division of the southern district of Georgia: *In re* the grand jury: *Venire facias* for November term 1898: Issued January 4th 1899. Returnable January 10th 1899; Returned by marshal and filed this — day of —— 189– —— —— clerk.

G.

Ex. R 5. S. H. Nov. 8, 1900.

In the District Court of the United States for Eastern Division, Southern District of Georgia, November Term, 1898.

229 *In re* THE TRAVERS JURY.

Names of Persons Drawn in Open Court to Serve as Travers Jurors in said District Court at the November Term, 1898.

1	John C. Sneed, (c.)	Chatham county,	Savannah.
2	Ambrose Ehrlich,	Chatham "	Savannah.
3	Patrick H. Kiernan,	Chatham "	Savannah.
4	Abiel F. Winn,	Liberty "	Dorchester.
5	John Morrison,	Bryan "	Ellabelle.
6	Thomas B. Moore,	Bryan "	Belknap.
7	A. V. Wood,	Glynn "	Brunswick.
8	James G. Hardee,	Chatham "	Savannah.
9	James Watt,	Thomas "	Thomasville.
10	James H. Dugger,	Bryan "	Ellabelle.
11	Thomas B. Ervin,	Chatham "	Savannah.
12	S. W. Freeman,	Decatur "	Donalsonville.
13	John G. Robertson,	Chatham "	Savannah.
14	Robert M. Hull,	Chatham "	Savannah.
15	G. S. Darley,	Clinch "	Homerville.
16	C. S. Hanks,	Brooks "	Quitman.
17	Adolph M. Lefler,	Chatham "	Savannah.
18	Paul H. Lynch,	Chatham "	Savannah.

EMORY SPEER,
U. S. Judge.

In the presence of
CECIL MORGAN,
Deputy Clerk U. S. Ct.
R. D. LOCKE,
Chief Office, Dep. Marshal.

G.

230 *In re* SAME.

Order for Venire.

It is ordered by the court that the clerk issue a writ of *venire facias* directing the marshal of the United States to summon the persons whose names were drawn in open court this 4th day of January 1899, on the panel hereto annexed, to be and appear personally at the United States court-room, in the city of Savannah, Georgia, on the 10th day of January A. D. 1899, at 9 o'clock in the forenoon of said day, then and there to be empaneled and sworn as travers jurors to serve in a district court of the United States for said division, then and there to be holden.

In open court Jan'y 4, 1899.

EMORY SPEER,
U. S. Judge.

D. C. 555. G.

UNITED STATES OF AMERICA,
Eastern Division of the Southern District of Georgia.

The President of the United States to the marshal of the United States for the southern district of Georgia, Greeting:

You are hereby commanded to summon the several persons named in the panel hereto annexed, personally to be and appear at a district court of the United States for the eastern division of
231 the southern district of Georgia, to be holden in the United States court-room, in the city of Savannah, Georgia, in and for said division and district, on the second Tuesday (being the tenth day) in January A. D. 1899, at 9 o'clock in the forenoon of that day, then and there to be empaneled and sworn as travers jurors, to serve at the November term 1898 of said district court.

And have you then and there this writ with your proceedings endorsed thereon.

(L. S. of the Court.) Witness the Honorable Emory Speer, judge of the district court of the United States, at Savannah, in said division and district, this 4th day of January A. D. 1899.

U. S.

L. M. ERWIN,
Deputy Clerk.

(Endorsed:) No. 6 In the district court of the United States for the eastern division of the southern district of Georgia. *In re* the travers jury: *Venire facias* for November term 1898. Issued January 4, 1899. Returnable January 10, 1899. Returned by marshal and filed this — day of —— 189- —— —— clerk.

G.

Q. How many grand jurors were drawn at the drawing January 4th 1899?

A. Thirty.

Q. How many from Glynn and how many from Chatham?

A. Twelve from Chatham and one from Glynn.

232 Q. And that would leave 17 from the other counties?

A. Seventeen.

Q. How many trial jurors were drawn?

A. Eighteen.

Q. How many from Chatham and how many from Glynn?

A. Eight from Chatham and none from Glynn.

Q. That would be 10 from the other counties?

A. Ten.

Q. When was the next jury drawn for this division of this district?

A. May 19th 1899.

Q. Grand and petit?

A. Both.

Q. How many grand jurors and how many from Chatham and how many from Glynn?

A. Thirty altogether; 17 from Chatham and none from Glynn.

Q. That would leave 13 from the other counties?

A. Thirteen, yes sir.

Q. How many trial jurors were drawn?

A. Twenty-six.

Q. How many from Chatham and how many from Glynn?

A. Twenty from Chatham and none from Glynn.

Q. That left six from the other counties?

A. Six, yes.

Mr. ROSE: I offer these two venires for the drawing of May 19th 1899, in evidence.

Same objection, ruling, and exception.

Ex. S 5. S. H. Nov. 8th, 1900.

233 In the District Court of the United States for Eastern Division, Southern District of Georgia, May Term, 1899.

In re THE — JURY.

Names of Persons Drawn in Open Court to Serve as Travers Jurors in said District Court at the May Term, 1899.

			P. O.
1	Henry G. Buford,	Chatham county,	Pooler.
2	William D. Dixon,	" "	Savannah.
3	C. A. L. Cunningham,	" "	"
4	Williard C. Offutt,	" "	"
5	Frederick Einsfield,	" "	"
6	Augustus M. Glover,	" "	"
7	George A. Gordon,	" "	"
8	Frank B. Papy,	" "	"
9	Ferrett W. Dixon, G	" "	"
10	E. M. Smith,	Thomas "	Thomasville.
11	C. W. Albritton,	Wayne "	Waynesville.
12	C. R. Ashley,	Lowndes "	Valdosta.

13	John A. Hutton,	Chatham	"	Savannah.
14	S. A. Jones,	Thomas	"	Thomasville.
15	Kin Braswell,	Decatur	"	Fairchilds.
16	A. B. Moore,	Chatham	"	Savannah.
17	Michael J. Barrett,	"	"	"
18	James B. Floyd,	"	"	"
19	Hal H. Bacon,	"	"	"
20	John W. Habersham, (c.) G	"	"	"
21	Wm. C. Fripp,	Chatham	"	Savannah.
22	Benj. F. Morgan,	"	"	Kingsville.

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23	Hugh Logan,	Chatham county,		Savannah.
24	Thos. E. Bessellieu,	"	"	"
25	Horace Rivers,	"	"	"
26	Jesse C. Touchton,	Clinch	"	Stockton.

EMORY SPEER,
U. S. Judge.

In the presence of—
M. ERWIN, *U. S. Att'y.*
R. D. LOCKE,
Chief Deputy Marshal.

In re SAME.

Order for Venire.

It is ordered by the court that the clerk issue a writ of *venire facias*, directing the marshal of the United States to summon the persons whose names were drawn in open court this 19th day of May, 1899, on the panel hereto annexed, to be and appear personally at the United States court-room in the city of Savannah, Georgia, on Tuesday, May 23d, A. D. 1899, at 9.30 o'clock in the forenoon of said day, then and there to be empaneled and sworn as travers jurors to serve in a district court of the United States for said division, then and there to be holden.

In open court May 19th, 1899.

EMORY SPEER,
U. S. Judge.

D. C. 44, 45. G.

UNITED STATES OF AMERICA,
Eastern Division of the Southern District of Georgia.

235 The President of the United States to the marshal of the United States for the southern district of Georgia, Greeting:

You are hereby commanded to summon the several persons named in the panel hereto annexed, personally to be and appear at a district court of the United States for the eastern division of the southern district of Georgia, to be holden in the United States court-

room in the city of Savannah, Georgia, in and for said division and district, on Tuesday (being the twenty-third day) in May, A. D. 1899, at 9 o'clock in the forenoon of that day, then and there to be empaneled and sworn as travers jurors, to serve at the May term 1899 of said district court.

And have you then and there this writ with your proceedings endorsed thereon.

(L. S. of the Court.) Witness the Honorable Emory Speer, judge of the district court of the United States, at Savannah, in said division and district, this 19th day of May, A. D. 1899.

U. S. L. M. ERWIN,
Deputy Clerk.

G.

(Endorsed:) No. 8 In the district court of the United States for the eastern division of the southern district of Georgia. *In re* the travers jury. *Venire facias* for May term 1899. Issued May 19th 1899. Returnable —— —, 189–. Returned by marshal and filed this 23d day of May 1899. S. F. B. Gillespie, deputy clerk. G.

Ex. T 5. S. H. Nov. 8th, 1900.

In the District Court of the United States for Eastern Division, Southern District of Georgia, May Term, 1899.

In re THE GRAND JURY.

Names of Persons Drawn in Open Court to Serve as Grand Jurors in said District Court at the May Term, 1899.

1	John D. Carswell,	Savannah,	Chatham	county.
2	Claude H. Troutman,	Quitman,	Brooks	"
3	Richard M. Courtney,	Savannah,	Chatham	"
4	John Balen (c.)	Savannah,	Chatham	"
5	Joseph W. McFarland,	Savannah,	Chatham	"
6	Spencer P. Shotter,	Savannah,	Chatham	"
7	Alfred F. King,	Savannah,	Chatham	"
8	James L. Beck,	Savannah,	Chatham	"
9	Thomas P. Keck,	Savannah,	Chatham	"
10	M. J. Kennidy,	Excelsior,	Bullock	"
11	C. H. Ramsey,	Quitman,	Brooks	"
12	P. M. Childress,	Valdosta,	Lowndes	"
13	John M. Shearouse,	Guyton,	Effingham	"
14	Max L. Byck,	Savannah,	Chatham	"

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15	J. B. Sheftall, (c.)	Savannah,	Chatham	county.
16	D. W. Lane,	Brinson,	Decatur	"
17	J. Hamp. Bennett,	Jessup,	Wayne	"
18	Jno. C. Normian,	Walthourville,	Liberty	"

19	Calhoun T. Morel,	Savannah,	Chatham	"
20	Adam C. Harmon,	Savannah,	Chatham	"
21	Geo. R. Youmans,	Waycross,	Ware	"
22	Paul T. Haskell,	Ways Sta. (Sav.)	Bryan	"
23	Michael F. Foley,	Savannah,	Chatham	"
24	Armin B. Palmer.	Savannah,	Chatham	"
25	W. G. Powell,	Cyrene,	Decatur	"
26	Nat. A. Briggs,	Valdosta,	Lowndes	"
27	W. M. Wilson,	Waycross,	Ware	"
28	Augustus H. Kelly,	Savannah,	Chatham	"
29	John E. Burgess,	Savannah,	Chatham	"
30	Joseph F. Emery,	Savannah,	Chatham	"

EMORY SPEER,
U. S. Judge.

In the presence of
R. D. LOCKE,
Chief Dep. Mar.
M. ERWIN, *U. S. Att'y.*

In re SAME.

Order for Venire.

It is ordered by the court that the clerk issue a writ of *venire facias*, directing the marshal of the United States to summon the persons whose names were drawn in open court this 19th day of May 1899, on the panel hereto annexed, to be and appear personally at the United States court-room in the city of Savannah, Georgia,
238 on *the* Monday May 23d A. D. 1899, at 9.30 o'clock in the forenoon of said day, then and there to be empaneled and sworn as grand jurors to serve in a district court of the United States for said division, then and there to be holden.

In open court May 19, 1899.

EMORY SPEER,
U. S. Judge.

D. C. 42, 44. G.

UNITED STATES OF AMERICA, }
Eastern Division of the Southern District of Georgia. }

The President of the United States to the marshal of the United States for the southern district of Georgia, Greeting:

You are hereby commanded to summon the several persons named in the panel hereto annexed, personally to be and appear at a district court of the United States for the eastern division of the southern district of Georgia, to be holden in the United States court-room in the city of Savannah, Georgia, for said division and district, on Tuesday (being the twenty-third day) in May A. D. 1899, at 9.30 o'clock in the forenoon of that day, then and there to be empaneled and sworn as grand jurors, to serve at the May term 1899, of said district court.

And have you then and there this writ with your proceedings endorsed thereon.

239 Witness the Honorable Emory Speer, judge of the district court of the United States at Savannah, in said division and district this the 19th day of May A. D. 1899.

L. M. ERWIN,
Deputy Clerk.

U. S. G.

(Endorsed:) No. 7. In the district court of the United States for the eastern division of the southern district of Georgia. *In re* the grand jury. *Venire facias* for May term 1899. Issued May 19th, 1899. Returnable —— —, 189–. Returned by marshal and filed this 23d day of May 1899. S. F. B. Gillespie, deputy clerk. G.

Q. Mr. Gillespie, will you be kind enough to add up the total number of jurors drawn for these four drawings, grand and petit?

A. Not separate?

Q. No, not separate. Before you do that, these jurors, grand and petit were drawn from the same box?

A. Yes, sir.

Q. And there is only one district-court jury-box for that division?

A. Only one.

Mr. ERWIN: That is a question of law, may it please your honor. There can be but one technical jury-box, but the law provides that the juries of the circuit and district courts can be used interchangeably.

240 The COMMISSIONER: There is no question about that.

Mr. ROSE: Not a bit. You don't pretend that the circuit-court box was used here, do you?

The COMMISSIONER: No; but his point is that they can draw a jury interchangeably out of either one.

Mr. ROSE: He says there was only one used here.

Mr. ERWIN: Used in this particular drawing you mean?

Mr. ROSE: Yes.

A. 197 is the total.

Q. How many of those are from Chatham?

A. 97.

Q. How many from Glynn?

A. Two, I believe.

Q. And from the other counties would be then 98?

A. 98, yes sir.

Q. Was the circuit-court box used, Mr. Gillespie, in drawing any of these jurors?

A. No sir.

Q. You had the custody of the box during these times?

A. Yes sir. Well, I say they were not drawn because the names were on the district-court jury, and it was customary to send the boxes away; both boxes.

Q. But they were on the district-court jury-list and not on the circuit court?

A. That is right; not on the circuit court.

Q. Mr. Gillespie, there being 562 names originally in the box put there in May 1897, after the drawing of May 19th 1899, how
241 many names had not been drawn from the box; please deduct 197 from 562?

A. Up to what time.

Q. Up to and including the drawing of May, 1899?

A. 365.

Q. The next drawing that was had from that box was when?

A. December 4th 1899.

Q. That is the jury, but the drawiug was on what date; November 22nd isn't it, the date of the venire?

A. I haven't it here. You have a certified copy of it I think. (Paper shown witness.) 22nd of November 1899.

Q. That was the next venire?

A. Yes sir.

Q. The jury drawn under that venire of November 22nd 1899 met when?

A. December 4th 1899.

Q. And when were they discharged; after December 8th?

A. December 11th.

Q. Do you recollect, Mr. Gillespie, who was the foreman of the grand jury that met on December 4th 1899?

A. Thomas S. McKay, of Valdosta, Lowndes county.

Q. Is that name one of the names drawn by the venire you have in your hand of the 22nd of November 1899?

A. Yes sir.

Q. Then there was no other grand jury between May 19th 1899, and the one of which Mr. McKay was the foreman?

A. No sir.

Q. Mr. Gillespie, if in the 562 names put in the box in the manner that you have described in the spring of 1897, you have testified there were 291 of the 562 from Chatham county?

A. No sir; 197.

242 Q. No. You testified before there were 291 on this book from Chatham county?

A. Yes; I understand you.

Q. Now you have also testified that of those drawn at the four drawings that you have given, there were 97 drawn from Chatham county.

A. 97, yes.

Q. How many did that leave in the box on the morning of the 22nd of November 1899, from Chatham county; please deduct 97 from 291?

Mr. ERWIN: I object to that question because it is a double question. He asks him in the first place to deduct the entire number of jurors drawn from July 1897, to the last drawing for the December 1899 jury, and asks how much would that leave in the box, and

then he asks him on top of that to deduct 97 from the total amount. Now I object to it because it does not follow under the testimony that that simple substraction which he asks from him even will answer the first question. If as the law provides that grand jurors may serve after two years and petit jurors after one year's interregnum, and as the testimony of the other deputy clerk who they brought here is that it was customary after the two years had elapsed to return the tickets to the box if the original jurors first drawn were returned to the box and should be drawn over at this last drawing, it would not be a question of simple substraction and the answer to the last question would mislead as to the first.

243 The COMMISSIONER: Put the first question first.

Mr. ROSE: There is no first question first. There is simply one question.

Objection overruled, exception taken.

Mr. ERWIN: Is the question simply, Deduct 97 from 291, or is it the balance of the question?

Mr. ROSE: Well, that had not been drawn.

A. That would leave 194.

The COMMISSIONER: It would leave 194 in the wheel when?

Mr. ROSE: On the morning of the 22nd of November, from Chatham county. I am confining myself to that.

The WITNESS: I was going to say, provided there were no tickets returned to the box.

Q. You have testified that the jury commissioner and the clerk did not return any to the box?

Mr. ERWIN: He has not testified any such thing.

Mr. ROSE: He has testified to that; that the box was made but one revision, and Elliott never did anything but the one time.

The WITNESS: That is all.

Q. That is right, isn't it?

A. I can explain that.

Q. You have testified so, that Elliott never had anything to do with the box except on the one occasion?

A. Yes sir.

244 Mr. ERWIN: He can't testify to that because in the first place—

The COMMISSIONER: As far as his knowledge is concerned, is what he says:

Mr. ERWIN: Yes, but whether or not Elliott was present in court when the two years had expired and the judge returned them, or whether he was or not, the clerk was present in court.

The COMMISSIONER: The witness is only speaking of his own knowledge.

Mr. ERWIN: He has testified as if he was there all the time and he has not qualified, and Mr. Rose is making him apply to that state of affairs and it is all testimony relating to the jury-lists and not return of the tickets to the box.

The COMMISSIONER: Your cross-examination will bring that out.

Mr. ROSE: The proof is that the judge, if anybody did, took them from the envelopes and put them in the box, and he had no more right to do that than you have, or I have. I am not afraid of it and you need not be so afraid of it. I will show you how you draw juries down South there under the law.

Mr. ERWIN: I am not worried about it.

Q. That left in the box 194 that had not been drawn prior to November 22nd 1899?

A. Yes sir; that would be right.

245 Q. How many had been drawn from Glynn county on these four drawings?

A. Two.

Q. How many was there in the box originally from Glynn county?

A. Fourteen.

Q. How many did that leave in the box that had not been drawn?

A. Twelve.

Q. Please add the 194 to the twelve and get the total that had not been drawn from Chatham and Glynn counties?

A. Two hundred and six.

Q. There was altogether in the box 365 that have not been drawn, as you have testified?

A. Yes sir.

Q. Please take 206 from 365?

A. One hundred and fifty-nine.

Q. So that on the morning of the 22nd of November 1899, there was in the jury-box 159 names which had not been drawn, which names were from the 12 counties in that division. Is that right?

A. There were that many; there were more probably.

Q. There were that many that had not been drawn, I am talking about?

A. I understand that; that had not been drawn.

Q. Now let's get at that in another way and verify it. You have testified there were 562 names in the box, have you not?

A. Yes sir.

Q. There were 305 from Chatham and Glynn counties; you have testified to that before?

A. 305, yes.

Q. That left 257 from the 12 counties covered by the order

246 of the 26th of January 1897, deducting as you did the 305 from the 562?

—. Yes sir, that is right.

Q. Now the total number of names drawn by these four drawings out of the box was how many?

A. One hundred and ninety-seven.

Q. No; I had not finished my question. From the counties other than Chatham and Glynn; from the same 12 counties. It was 98?

A. Ninety-nine.

Q. No, 98?

A. 97 from Chatham and 2 from Glynn.
Q. And 98 from the other counties?
A. Yes sir; that is right.
Q. 98, isn't it?
A. Yes sir.
Q. Deduct the 98 from the 257 and you get what?
A. 159.
Q. That is the same result that we arrived at by the other method?
A. Yes sir.
Q. How many names were there from the 12 counties—now I am excluding Chatham and Glynn—of grand and petit jurors drawn in July 1897?
A. Thirty-four.
Q. You do not understand my question. The number from the other counties; the 12 counties?
A. Twenty-one.
Q. And how many were there drawn from the other counties in February, 1898; from the 12 counties?
A. Thirty-one.
Q. The total number of that is how much? 21 and 31?
A. 52.
Q. Add 52 to 159?
A. 211.
247 Q. So that if the names from the counties other than Chatham and Glynn that had been drawn prior to January 4th 1899, had been returned to this box, how many would there have been in it then of names other than those from Chatham and Glynn; from the 12 counties?
A. 211.
Q. The next drawing, January 4th 1899, was within a year, was it not, of November 23rd 1899?
A. Yes sir.
Q. And under your practice no names drawn within a year were ever returned prior to the next drawing, was there?
A. Well, I am not sure about that, Mr. Rose. The judge's custom is to tear the envelopes up and put them back in the box. There is two partitions in the box, and I have never noticed whether he took one envelope or two.
Q. Don't you know that he did not put back in the box the names that had been drawn within a year prior to the time of the then drawing that was taking place?
A. He would not be apt to do so, but then I could not say that because I am on his right side when he draws them and making my venire.
Q. Now let me get this down in one nutshell. If no names had been put back in the box out of the names drawn after the box was revised by you, there would have been left in the box 159 names from the 12 counties named in this order, leaving out the counties of Chatham and Glynn?
A. Yes sir.

248 Q. If all the names that had been drawn from these 12 counties within a year prior to November 22nd 1899, had been returned to the box, there would have been 211 names in the box?

A. 211.

Q. Now when was the next order entered with reference to a jury being drawn. That has been put in evidence?

A. November 22nd.

Mr. ROSE: I don't know what the exhibit number is, but you have put that in evidence, the order for the drawing of the December grand jury.

Mr. ERWIN: We have one like that. I don't know what the number is myself.

Mr. ROSE: It has been put in evidence and I will lease it blank in my question.

Q. The Government has offered in evidence a certified copy from the files of the court of a letter from Marion Erwin, United States attorney, to Hon. Emory Speer, of date November 22nd 1899, and an order attached thereto made by Judge Speer dated that same day. Do you recognize that as being a copy of that letter and order (showing)?

A. Yes sir.

Q. Have you examined the records, Mr. Gillespie, to see whether from the time of the entry of the order of January 26th 1897, there was any other order with reference to the counties from which juries should be drawn, down to the time of the date of this order, November 22d 1899?

A. I have no record of any other order.

Q. You have examined the records for that purpose?

249 A. I cannot say that I have examined the records for that purpose, but I would know if it was on the minutes.

Q. You know there is no other order?

A. I know there is no other order on the minutes.

Q. On the 22d of November 1899, the date of that order, there was no jury commissioner for the eastern division of the southern district of Georgia, was there?

A. No sir.

Q. This order provides and requires for the grand jury to be drawn from the jury-box of the eastern division of the district, and so on, and that the said jurors be returned from the counties of the said eastern division, other than the counties of Chatham and Glynn. Was there ever a jury-box made, a jury-list made or prepared from the 26 counties in that division, excluding Chatham and Glynn?

A. No sir.

Q. And there being no jury commissioner at that date, no jury-box was ever prepared in compliance with that order, was there?

Mr. ERWIN: I object to that question because——

Mr. ROSE: I withdraw it.

Q. After November 22d 1899, and prior to December 4th 1899, was there a jury-box or a jury-list prepared from the counties of the eastern division, other than Chatham and Glynn?

A. Not to my knowledge.

Q. You have no record of any such box?

A. No.

Q. You have never seen any such box, have you?

A. No sir.

250 Mr. ERWIN: I again, may it please your honor, object to the question and answer because the learned counsel undertook to get the witness to construe the order in the previous question and then when I got up and objected to that he withdrew it. He, in the most subtle form put the question a second time and got the witness to answer before I had time to object.

Mr. ROSE: I didn't ask him to construe it. I asked him for the facts. I will construe it myself when I get ready.

Mr. ERWIN: He has put one question in which he asks the witness from the 26 or 28 counties in the district, and then turned around and asked him *him* the question from the counties in the district other than Chatham and Glynn. He put it following the other question so as to make the witness construe this order in the meaning of the other counties in the district instead of the counties other than Chatham and Glynn.

Mr. ROSE: I do not ask him to construe it at all, but simply ask for the fact, how many counties there were.

Mr. ERWIN: Having put a previous question which was a leading question, and got that on the witness's mind, he puts another question which is practically the same.

251 The COMMISSIONER: He withdrew the other question and now he is asking for the fact.

Mr. ROSE: I don't want to be criticized unjustly and unfairly, and I won't stand it.

Mr. ERWIN: I do say that your question as it reads ought to read after the leading question you put, whether it was a jury-box composed of all the other counties in the district, and not counties—whether there was a jury-box provided in which jurors from counties other than Chatham and Glynn were in the box. You have got your question so framed as to mislead in that. I will let it stand, however.

Mr. ROSE: All. That is more than the indictment will do.

Mr. ERWIN: We will see about that later.

Mr. ROSE: I think we agreed when we had this question up when your brother was on the stand, and I offered in evidence Exhibit "H 5" for identification, being the compilation of the rules of the court with respect to the drawing of jurors, that all that part on page 25 under the heading of No. 80, down to the bottom of the last completed sentence on page 26 should be received subject to verification by you as to its being the rules of the court. The next thing that appears is this order of January 26th 1897.

Mr. ERWIN: I don't remember precisely what the agree-
252 ment is. Whatever agreement we did enter into will stand. I object to that order as a rule of court because it was not a rule of court, but a specific order to do a specific thing. I do not object to the certified copy of it.

Mr. ROSE: Well, it lasted until another took its place, and that was done in November 1899.

Mr. ERWIN: My contention was, when the jury-box was revised and the list completed, that the order was completely complied with under the act, and that jurors could be drawn from that list so prepared right straight along under the law until there was a new revision made.

Mr. ROSE: And when they got it down to 25 they could draw 30 jurors out of it?

Mr. ERWIN: No sir; they could not do an impossible thing.

Q. Mr. Gillespie, I show you Exhibit "H 5" for identification, which purports to be the rules of practice of the circuit and district courts of the United States for the southern district of Georgia, and ask you if what appears on page 25 under the numerals 80, relating to juries, down to and including this sentence, "The marshal shall summon jurors by delivering to each person personally or by leaving at his usual residence a written or printed notice," if that is the rule of the court in relation to the matters there stated?

A. Yes sir.

253 Q. Then under the head of 81, 82, 83 and 84, are they also rules of the court with relation to jurors?

Mr. ERWIN: I object to this method of proving the rules of the court, as rules of court are always to be proved by certified copies of the orders making the rules from the records of the court.

Mr. ROSE: There are lots of rules that are never entered in an order. There are rules of lots of things to govern the practice of the court.

Mr. ERWIN: That would be proved as matter of law.

The COMMISSIONER: Do you want him to compare those with the rules of the court?

Mr. ERWIN: My objection is that a great many of these rules were enacted in 1880, and an inspection will show that acts of Congress have repealed a great many of them, and they still stand in that book.

Mr. ROSE: Do you mean to say with reference to this question of juries?

Mr. ERWIN: The way to prove them would be to show the copies of the orders that the court made adopting particular rules, and at the dates they were adopted. The dates form a material part of any rule of court. This is merely a compilation made by a deputy clerk, not by this deputy clerk, but by a deputy clerk of the circuit court living in a different place, and these may or may not be correct rules.

254 The COMMISSIONER: You may let him put in a certified copy of the rules on file in the office, if that is your point.

Mr. ERWIN: He has got to put certified copies of the orders of court. The rules are on the minutes of the court.

The COMMISSIONER: The rules of the court are spread, I suppose, on the minutes of the court.

Mr. ROSE: Do you go back on your agreement?

Mr. ERWIN: No, sir; my agreement stands.

Mr. ROSE: Your agreement was that they should be received subject to correction by you.

Mr. ERWIN: Whatever my agreement is, it stands.

Mr. ROSE: Then don't object to it when I try to verify it by the witness.

Mr. ERWIN: I do object to your undertaking to prove in this way the rules. Whatever I agreed to, stands, and if I agreed to anything there it stands, because I was careful in making the agreement, but when you undertake to try to prove rules of court by oral testimony of a deputy clerk 700 miles away from home, not having the originals before him, and not even with a paper which he prepared himself with the original, and the dates of the rules purporting to be shown not being set out, I say it is a wrong way to get at it.

The COMMISSIONER: If that is your objection I sustain it.

255 Mr. ROSE: When he is asked to produce the original papers, the judge and yourself refused to allow him to produce them.

Mr. ERWIN: But not certified copies.

Mr. ROSE: Now you object to this because he cannot have the original here and compare it; right here.

Mr. ERWIN: Do you want to bring the original minutes of the court here?

Mr. ROSE: You say I must put those in evidence.

Mr. ERWIN: I said certified copies.

Mr. ROSE: I beg your pardon. I can hear. You said he didn't have the originals here to compare them. I want to understand whether I am to put this testimony in or not.

Mr. ERWIN: I say you cannot prove it in this way.

Mr. ROSE: You can make your objections, but you cannot say whether I can or not. That is for the court.

The COMMISSIONER: I sustain the objection. A certified copy should be put in its place.

Mr. ROSE: I take an exception to that.

The COMMISSIONER: This man ought to have a chance to compare that book with the original on file.

Q. Are you familiar with this book, Exhibit "H 5" for
256 identification, the rules of practice of the circuit and district courts of the United States?

A. Yes sir.

Q. How long has that been used, if at all, in the district court?

Mr. ERWIN: I object to that on the ground that the question of use is immaterial. It might be a matter of who used it; for what purpose it was used, whether used merely as a matter of reference, or as authoritative rules in the form there presented. He is pre-

senting the compilation of rules that he has not even attempted to show, and the fact is, never was adopted in that form by the court, and which rules in many respects have long been abrogated, and in some respects are not correct.

The COMMISSIONER: Do you mean abrogated by an order of the court?

Mr. ERWIN: The first question to be asked is, Has he compared them with the rules.

(By the COMMISSIONER:)

Q. Have you compared these with the printed rules?

A. No sir.

(By Mr. ROSE:)

Q. Didn't you compare that with me?

A. This 80th one I did, but I have not compared them all.

Q. Did you compare with me that 80th rule with the records of your office?

A. Yes sir.

Q. Is it a correct copy?

A. Yes sir.

Q. That does not include that part that is under the date of the order, January 22d 1897?

A. No sir.

Mr. ROSE: I offer that in evidence.

257 Mr. ERWIN: Which?

Mr. ROSE: No. 80.

Mr. ERWIN: I want to ask him one question about it.

Mr. ROSE: When I get it in you can.

Mr. ERWIN: I desire to ask him one question before it is admitted in evidence.

(By Mr. ERWIN:)

Q. Is all this rule 80 above the date, January 22d 1897?

A. No sir.

Q. Do you mean to say that all that rule of court is of date, January 26th 1897?

A. No sir; that commences here (indicating).

Mr. ROSE: I expressly excluded that part of it. I am not given to trying to deceive the court or cheat. I have excluded that part of the rule which we have already in evidence as an order of January 26th 1897. That is in evidence.

Mr. ERWIN: If I did not ask — this question, the remaining part of it above that date might be though- to be on the same date.

The WITNESS: That is one of the old rules in the old book.

Q. This rule 80 is taken from a compilation of rules existent as far back as 1880, was it not?

A. Yes sir.

Mr. ROSE: 1873 if you want to go back to that.

Mr. ERWIN: Well.

258 Mr. ROSE: And if he will go away back further, I can get the report of the committee that reported the original rules.

Mr. ERWIN: It is sufficient to show it is a copy of a rule made back in 1873, according to the admission of counsel.

Mr. ROSE: It states on the outside, may it please your honor, adopted April term 1873, with all amendments to October term 1897.

Mr. ERWIN: The jury act was revised in 1879.

Mr. ROSE: The jury act as revised shows that you have an illegal grand jury.

The COMMISSIONER: You mean about there being 300 in the wheel?

Mr. ROSE: Yes.

The COMMISSIONER: I am familiar with that.

Mr. ROSE: Of course you are, and you never drew one like this.

Mr. ERWIN: Did you put in that past panel from the drawing of 1899?

Mr. ROSE: I did not.

Mr. ERWIN: You questioned Mr. Gillespie about it.

Mr. ROSE: I asked him who was the foreman of the grand jury that met in 1899; this alleged grand jury, and I showed him this paper.

259 Cross-examination by Mr. ERWIN:

Q. Mr. Gillespie, you stated in answer to one of Mr. Rose's questions that you were in charge of the records of the clerk's office in Savannah. You mean that you are in charge of the records under the clerk, do you not?

A. Certainly.

Q. Mr. King, the clerk, makes Savannah his headquarters?

A. Yes sir.

Q. And he is in the supreme charge of the records as clerk?

A. Yes sir.

Q. When the jurors are drawn from the box, their names—say for the grand jury—their names are entered first on a sheet of paper, the names and counties and address?

A. Yes sir.

Mr. ROSE: What jurors are you referring to now and when?

Mr. ERWIN: The grand jurors for the eastern division of the southern district at the times you have questioned him about.

Q. The names are entered on a sheet of paper, the name of each juror, the county and his address?

A. Yes sir.

Q. And that list is signed by the judge and usually by some of the officers of the court present, is it not? The drawing?

A. Yes sir.

Q. Then the judge issues an order directing the clerk to
260 issue a writ of *venire facias* for the summonsing of those jurors?

A. Yes sir.

Q. And then the clerk issues the writ?
A. Yes sir.
Q. Then the marshal, after making summons, makes a return of the persons served?
A. Yes sir.
Q. Now the list on which the names of the jurors are first entered when drawn from the box, are they not also entered on the minutes of the court from that list?
A. From the venire.
Q. From the sheet; not from the venire, because the venire is not yet issued. It is entered before issuing the venire on the minutes of the court from that sheet on which they are entered, as the names are taken from the box?
A. Yes sir.
Q. Now look at these papers showing the drawing of the grand jury for the eastern division for the November term of 1899?

Mr. ROSE: Is that in evidence, Mr. Erwin?
Mr. ERWIN: We haven't put it in evidence.
Mr. ROSE: Is it the same venire?
Mr. ERWIN: It is the same venire you had.

Q. That is a correct copy, Mr. Gillespie?
A. I presume so. I had rather compare it with my own copies though. I believe it is correct.
Q. Well, you need not compare it if you do not care to do it?
A. I am willing to do it, but I cannot swear that this is a copy.
261 Q. This is a properly certified copy?
A. Oh, yes, sir; certified by the clerk. Staten B. Tomlinson's name is spelled wrong there. Statin it should be.

Mr. ERWIN: You can put it right.
Mr. ROSE: No; I object to his putting it right.
Mr. ERWIN: Very well. Let it stand.
The WITNESS: They are the same except that one.

Q. They compare all the same, don't they?
A. Yes sir.

Mr. ERWIN: I desire to have this marked in evidence and offer it in evidence. It is the same as yours except the marshal's return is added.
Marked Exhibit 335, S. H., November 8th, 1900.
Mr. ROSE: I object to it as simply irrelevant and immaterial.

262 Ex. 335. Nov. 8, 1900.

In the District Court of the United States for Eastern Division, Southern District of Georgia, November Term, 1899.

In re THE GRAND JURY.

Names of Persons Drawn in Open Court to Serve as Grand Jurors in said District Court at the November Term, 1899.

1. Joseph B. Underwood	Quitman	Brooks	county
2. B. F. Strickland	Valdosta	Lowndes	"
3. Statin B. Tomlinson	Stockton	Clinch	"
4. Thomas J. Beasley	Quitman	Brooks	"
5. A. A. Parrish	Valdosta		
6. Harris A. Tomlinson	Stockton	Clinch	"
7. J. B. Varn	Valdosta	Lowndes	"
8. S. L. Youmans	Blackshear	Pierce	"
9. L. H. Jerger	Thomasville	Thomas	"
10. Charles N. Exley	Exley	Effingham	"
11. F. A. Thomas	Iron City	Decatur	"
12. W. T. Chapman	Whigham	Decatur	"
13. D. P. Averett	Statesboro	Bulloch	"
14. Henry Turner	Quitman	Brooks	"
15. M. B. Jones	Thomasville	Thomas	"
16. W. H. Huxford	Homerville	Clinch	"
17. Thos. S. McKey	Valdosta	Lowndes	"
18. Wm. S. Delk	Johnson Sta.	Liberty	"
19. W. B. Hambleton	Thomasville	Thomas	"
20. M. M. Futch	"	"	"
21. Wm. Miller	"	"	"
22. W. H. De Loach	Statesboro	Bulloch	"
23. David A. Beasley	Quitman	Brooks	"
24. P. S. Heeth	Thomasville	Thomas	"

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25. R. L. Hicks	Thomasville	Thomas	county.
26. James M. Reynolds	Blackshear	Pierce	"
27. John D. Bozeman	Quitman	Brooks	"
28. Reuben Brunson	Donaldsonville	Decatur	"
29. S. J. Barrineau	Faceville	"	"
30. W. R. Bell	Brinson	"	"
31. A. R. Benton	Donaldsonville	"	"
32. G. B. Alday	"	"	"
33. D. W. Kelly	Cairo	"	"
34. J. T. Saunders	Fairchild	"	"
35. W. A. Hagins	Mill Ray	Bulloch	"

EMORY SPEER,
U. S. Judge.

Drawn by judge in the presence of
L. M. ERWIN,
Deputy Clerk.
JOHN M. BARNES,
U. S. Marshal.
MARION ERWIN,
U. S. Attorney.

This 22nd day of November, 1899.

In re SAME.

Order for Venire.

It is ordered by the court that the clerk issue a writ of *venire facias*, directing the marshal of the United States to summon the persons whose names were drawn in open court this 22nd day of November, 1899, on the panel hereto annexed to be and appear personally at the United States court-room in the city of Savannah, Georgia, on the fourth day of December, A. D. 1899, at 9 o'clock in the forenoon of said day, then and there to be empaneled and sworn as grand jurors to serve in a district court of the United
264 States for said division, then and there to be holden.

In open court, Nov. 22nd, 1899.

EMORY SPEER,
U. S. Judge.

UNITED STATES OF AMERICA,
Eastern Division of the Southern District of Georgia.

The President of the United States to the marshal of the United States for the southern district of Georgia, Greeting:

You are hereby commanded to summon the several persons named in the panel hereto annexed, personally to be and appear at a district court of the United States for the eastern division of the southern district of Georgia, to be holden in the United States court-room in the city of Savannah, Georgia, in and for said division and district, on the first Monday (being the 4th day) in December, A. D. 1899 at 10 o'clock in the forenoon of that day, then and there to be empaneled and sworn as grand jurors, to serve at the November term 1899 of said district court.

And have you then and there this writ, with your proceedings endorsed thereon.

Witness the Honorable Emory Speer, judge of the district court of the United States, at Savannah, in said division and district, this 22nd day of November, A. D. 1899.

[Seal of U. S. District Court, Southern District of Georgia.]

L. M. ERWIN,
Deputy Clerk.

265 District Court United States, Southern District of Georgia, Eastern Division, November Term, 1899, at Savannah, Ga.

The return of John M. Barnes, U. S. marshal, to grand jury venire, drawn Nov. 22, 1899, for the November term of U. S. district court for the eastern division, served as follows:

	Personally on.	*At Residence on.*	*Not Found.*
1. Joseph B. Underwood			
2. B. F. Strickland			
3. Statin B. Tomlinson			
4. Thomas J. Beasley			
5. A. A. Parrish			
6. Harris A. Tomlinson			
7. J. B. Varn			
8. S. L. Youmans			
9. L. H. Jerger			
10.	.....	.....	Chas. N. Exley
11. F. A. Thomas			
12. W. T. Chapman			
13. D. P. Averett			
14. Henry Turner			
15. M. B. Jones			
16	.....	.....	W. H. Huxford
17. Thos. S. McKey			
18. Wm. S. Delk			
19. W. B. Hamilton			
20. M. M. Futch			
21. William Miller			
22. W. H. De Loach			

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23. David A. Beasley			
24. P. S. Heeth			
25. R. L. Hicks			
26	.....	.....	James M. Reynolds
27. Jno. D. Bozeman			
28. Reuben Brunson			
29. S. J. Barrineau			
30. W. R. Bell			
31. A. R. Benton			
32. G. B. Alday			
33.	.....	.....	D. W. Kelly
34.	.....	.....	J. T. Saunders
35. W. A. Hagins			

JOHN M. BARNES,
U. S. Marshal.

Dated at Savannah, Ga. this December 4, 1899.

Returned by marshal and filed this 4th day of December, 1899.

L. M ERWIN,
Deputy Clerk.

267 UNITED STATES OF AMERICA, *Southern District of Georgia,* } ss:

I, H. H. King, clerk of the district court of the United States for the southern district of Georgia, do hereby certify that the foregoing typewritten pages numbered from one to five inclusive, contain a true and complete copy of the list of names of persons drawn in open court to serve as grand jurors in the district court of the United States for the eastern division of the southern district of Georgia at the November term, 1899; and of order issued November 22, 1899, directing clerk to issue *venire facias;* and of *venire facias* issued on November 22, 1899, and of the return of John M. Barnes, U. S. marshal, to *venire facias,* filed December 4th, 1899, as the same appear of record and of file in my office.

Witness my official signature and the seal of said district court, this thirteenth day of January, in the year of our Lord one thousand and nine hundred.

[SEAL.]

H. H. KING, *Clerk,*
By L. M. ERWIN,
Deputy Clerk.

268 Q. Now Mr. Gillespie, look at these papers certified by Mr. King, the clerk, purporting to be extracts from the minutes of the district court of the United States, eastern division of the southern district of Georgia, Book 8, folios 74 to 82, in the matter of the grand jury and return of indictments December 4th, 5th, 6th, 7th, 8th 1899. Did you prepare that list for the clerk?

A. Yes sir.

Q. Now the first entry on these papers is the copy on the
269 minutes of the court of the list of jurors drawn, is it not?

A. Yes sir.

Q. There is one difference that I note. I notice on this certified copy of the names as drawn, taken from the minutes of the court, that there is one difference in the spelling of a name here from what it is on the copy of the venire which you have made here for Mr. Rose, as well as one made for me, and that is Reuben Brinson or Reuben Brunson. It appears on the copy from the venire that the name is entered Reuben Brunson, Donellsville, Decatur county, and on the copy of the minutes, being the copy of the identical same venire, it has got it Reuben Brinson, Donellsville, Decatur county. That ought to be the same if they both purport to be copies of the same paper?

A. They should be the same. That is the man's name.

Mr. ERWIN: I offer this certified copy from the minutes of the court in evidence.

Mr. ROSE: It is objected to as irrelevant and immaterial; that a certified copy is not the best evidence, but taken in connection with the testimony of the witness who testifies that he made this himself and knows it to be true, that objection is not insisted upon so far as its being a certified copy.

(By Mr. ROSE:)

Q. I understand you made that yourself, Mr. Gillespie?
A. Yes sir.

Paper marked Exhibit 336, S. H. November 8th 1900.

270 UNITED STATES OF AMERICA, } ss:
Eastern Division, Southern District of Georgia, }

I, H. H. King, clerk of the district court of the United States of America, for the southern district of Georgia, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals now on file, and remaining on record in my office, to wit: extracts from the minutes of the district court of the United States, eastern division, southern district of Georgia, from Book "H," folios 74 to 82, in the matter of the grand jury and return of indictments, Dec. 4, 5, 6, 7, 8, 1899.

In witness whereof, I have caused the seal of the said court to be hereunto affixed, at the city of Savannah, in the southern district of Georgia, this thirteenth day of January, in the year of our Lord, one thousand nine hundred (1900), and of the Independence of the United States, the one hundred and twenty-fourth.

[SEAL.] H. H. KING, *Clerk.*

271 District Court of the United States, Eastern Division, Southern District of Georgia, November Term, 1899.

Extract from Minute Book "H," Folios 72 to 82.

MONDAY, *December 4th*, 1899—10 o'clock a. m.

Court met and was opened for business by the Honorable Emory Speer, judge, presiding:—Marion Erwin, U. S. attorney, John M. Barnes, U. S. marshal and S. F. B. Gillespie, deputy clerk in attendance.

In re THE GRAND JURY.

Names of Jurors Drawn in Open Court to Serve as Grand Jurors in said District Court at the November Term, 1899.

1. Joseph B. Underwood	Quitman	Brooks county.
2. B. F. Strickland	Valdosta,	Lowndes "
3. Staten B. Tomlinson	Stockton,	Clinch "
4. Thomas J. Beasley	Quitman,	Brooks "
5. A. A. Parrish	Valdosta,	Lowndes "
6. Harris A. Tomlinson	Stockton,	Clinch "
7. J. B. Varn	Valdosta,	Lowndes county
8. S. L. Youmans	Blackshear,	Pierce county.
9. L. H. Jerger	Thomasville,	Thomas "
10. Charles N. Exley	Exley	Effingham county
11. F. A. Thomas,	Iron City,	Decatur "

12.	W. T. Chapman	Wigham,	Decatur county.
13.	D. P. Averitt	Statesboro,	Bulloch "
14.	Henry Turner	Quitman	Brooks "
15.	M. B. Jones	Thomasville,	Thomas "
16.	W. A. Huxford	Homerville,	Clinch county
17.	Thomas S. McKey	Valdosta,	Lowndes county

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18.	William S. Delk.	Johnson Sta.	Liberty county
19.	W. B. Hambleton	Thomasville,	Thomas "
20.	M. M. Futch	"	" "
21.	William Miller	"	" "
22.	W. H. De Loach	Statesboro,	Bulloch "
23.	David A. Beasley	Quitman,	Brooks, "
24.	P. S. Heeth	Thomasville,	Thomas "
25.	R. L. Hicks	"	" "
26.	James S. Reynolds	Blackshear,	Pierce "
27.	John D. Bozeman	Quitman,	Brooks "
28.	Reuben Brinson	Donaldsonville,	Decatur "
29.	S. J. Barrineau	Faceville,	" "
30.	W. R. Bell	Brinson,	" "
31.	A. R. Benton	Donaldsonville,	" "
32.	G. B. Alday	"	" "
33.	D. W. Kelly	Cairo,	" "
34.	J. T. Saunders	Fairchilds,	" "
35.	W. A. Hagins	Mill Ray,	Bulloch "

EMORY SPEER,
U. S. Judge.

Drawn by judge in presence of
L. M. ERWIN,
Deputy Clerk.
JOHN M. BARNES,
U. S. Marshal.
MARION ERWIN,
U. S. Attorney.

This 22nd day of November, 1899.

In re THE GRAND JURY.

Order for Venire.

It is ordered by the court that the clerk issue a writ of *venire facias* directing the marshal of the United States to summon the persons whose names were drawn in open court this 22nd day of November, 1899, on the panel hereto annexed to be and appear per-
273 sonally at the United States court-room in the city of Savannah, Georgia, on the fourth day of December, A. D. 1899, at 10 o'clock in the forenoon of said day then and there to be empaneled and sworn as grand jurors in a district court of the United States for said division then and there to be holden.

In open court, November 22nd, 1899.

In re THE GRAND JURY.

Return of Venire.

The marshal having returned the writ of venire into court with his return endorsed thereon, and the roll being called the following grand jurors answered to their names:

1. Joseph B. Underwood
2. B. F. Strickland.
3. Staten B. Tomlinson.
4. Thomas J. Beasley.
5. A. A. Parrish.
6. Harris A. Tomlinson.
7. J. B. Varn.
8. S. L. Youmans.
9. L. H. Jerger.
10. F. A. Thomas.
11. W. T. Chapman.
12. D. P. Averitt.
13. Henry Turner
14. M. B. Jones
15. Thomas S. McKey
16. W. B. Hambleton
17. William Miller.
18. David A. Beasley.
19. R. L. Hicks.
20. Jno. D. Bozeman.
21. Reuben Brinson
22. S. J. Barrineau
23. W. R. Bell.

P. S. Heeth, A. R. Benton, G. B. Alday and W. S. Delk reported and were excused for the term.

274 In the Matter of THE GRAND JURY.

Names of Grand Jury Empaneled and Sworn.

1. Joseph B. Underwood.
2. Benjamin F. Strickland.
3. Staten B. Tomlinson.
4. Thomas J. Beasley.
5. Ansel A. Parrish.
6. John B. Varn.
7. Harris A. Tomlinson.
8. Stephen L. Youmans.
9. Louis A. Jerger.
10. Frank A. Thomas.
11. William T. Chapman.
12. David P. Averitt.
13. Henry Turner.
14. Mitchell B. Jones.
15. Thomas S. McKey.
16. William B. Hambleton.
17. William Miller.
18. Richard L. Hicks.
19. David A. Beasley.
20. John D. Bozeman.
21. Reuben Brinson.
22. Samuel J. Barrineau.
23. Wiley R. Bell.

The charge of the court having been delivered to the grand jury, the grand jurors of whom mention has been made, twenty-three in number, retired to their room to make up their presentments.

Court adjourned to 10 o'clock a. m. tomorrow.

TUESDAY, *Dec. 5th*, 1899—10 o'clock a. m.

Court met and was opened for business by the Honorable Emory Speer, judge presiding:—Marion Erwin, U. S. attorney, John M. Barnes, U. S. marshal, and S. F. B. Gillespie, deputy clerk in attendance.

In re THE GRAND JURY.

Regular Panel in Attendance.

275

1. Joseph B. Underwood.
2. Benjamin F. Strickland.
3. Staten B. Tomlinson.
4. Thomas J. Beasley.
5. Ansel A. Parrish.
6. Harris A. Tomlinson.
7. John B. Varn.
8. Stephen L. Youmans.
9. Louis A. Jerger
10. Frank A. Thomas.
11. William T. Chapman.
12. David P. Averitt.
13. Henry Turner.
14. Mitchell B. Jones
15. Thomas S. McKey
16. William B. Hambleton.
17. William Miller.
18. David A. Beasley.
19. Richard L. Hicks
20. John D. Bozeman
21. Reuben Brinson
22. Samuel J. Barrineau
23. Wiley R. Bell

Court adjourned to 10 o'clock a. m. tomorrow.

WEDNESDAY, *December 6th*, 1899—10 o'clock a. m.

Court met and was opened for business by the Honorable Emory Speer, judge presiding:—Marion Erwin, U. S. attorney, John M. Barnes, U. S. marshal and S. F. B. Gillespie, deputy clerk, in attendance.

In re THE GRAND JURY.

Regular Panel in Attendance.

1. Joseph B. Underwood.
2. Benjamin F. Strickland.
3. Staten B. Tomlinson.
4. Thomas J. Beasley.
5. Ansel A. Parrish.
6. Harris A. Tomlinson.
7. John B. Varn
8. Stephen L. Youmans.
9. Louis A. Jerger.
10. Frank A. Thomas.
11. William T. Chapman
12. David P. Averitt
13. Henry Turner
14. Mitchell B. Jones
15. Thomas S. McKey.
16. William B. Hambleton.
17. William Miller
18. David A. Beasley
19. Richard L. Hicks.
20. John D. Bozeman.
21. Reuben Brunson
22. Samuel J. Barrineau.
23. Wiley R. Bell.

Court adjourned to 10 o'clock a. m. tomorrow.

276 THURSDAY, *December 7th*, 1899—10 o'clock a. m.

Court met and was opened for business by the Honorable Emory Speer, judge presiding:—Marion Erwin, U. S. attorney, John M. Barnes, U. S. marshal and S. F. B. Gillespie in attendance.

In re THE GRAND JURY.

Regular Panel in Attendance.

1. Joseph B. Underwood.
2. Benjamin F. Strickland.
3. Staten B. Tomlinson.
4. Thomas J. Beasley.
5. Harris A. Tomlinson.
6. Ansel A. Parrish.
7. John B. Varn.
8. Stephen L. Youmans.
9. Louis A. Jerger.
10. Frank A. Thomas.
11. William T. Chapman.
12. David P. Averett.
13. Henry Turner.
14. Mitchell B. Jones.
15. Thomas S. McKey.
16. William B. Hambleton.
17. William Miller.
18. David A. Beasley.
19. Richard L. Hicks.
20. John D. Bozeman
21. Reuben Brunson
22. Samuel J. Berrineau
23. Wiley R. Bell

Court adjourned to 10 o'clock a. m. tomorrow.

FRIDAY, *December* 8, 1899—10 o'clock a. m.

Court met and was opened for business by the Honorable Emory Speer, judge presiding:—Marion Erwin, U. S. attorney, John M. Barnes, U. S. marshal and S. F. B. Gillespie, deputy clerk in attendance.

In re THE GRAND JURY.

Regular Panel in Attendance.

277

1. Joseph B. Underwood
2. Benjamin F. Strickland.
3. Staten B. Tomlinson.
4. Thomas J. Beasley.
5. Ansel A. Parrish
6. John B. Varn
7. Stephen L. Youmans.
8. Louis H. Jerger
9. Frank A. Thomas
10. William T. Chapman
11. David P. Averett
12. Harris A. Tomlinson
13. Henry Turner.
14. Mitchell B. Jones
15. Thomas S. McKey
16. William B. Hambleton
17. William Miller
18. David A. Beasley
19. Richard L. Hicks
20. John D. Bozeman
21. Reuben Brunson
22. Samuel J. Barrineau
23. Wiley R. Bell

The grand jury having come into court and the roll being called, the following-named grand jurors answered to their names:

1. Thomas S. McKey, foreman.
2. Joseph B. Underwood.
3. Benjamin F. Strickland
4. Staten B. Tomlinson
5. Thomas J. Beasley
6. Ansel A. Parrish
7. John B. Varn
8. Stephen L. Youmans.
13. Harris A. Tomlinson.
14. Henry Turner.
15. Mitchell B. Jones.
16. William B. Hambleton
17. William Miller
18. David A. Beasley.
19. Richard L. Hicks.
20. John D. Bozeman.

9. Louis H. Jerger
10. Frank A. Thomas
11. William T. Chapman.
12. David P. Averett
21. Reuben Brunson.
22. Samuel J. Barrineau.
23. Wiley R. Bell.

278 Whereupon the grand jurors whose names are mentioned above, twenty-three in number, returned into court the following true bills of indictment:

THE UNITED STATES *versus* BENJAMIN D. GREENE, JOHN F. GAYNOR, William T. Gaynor, Edward H. Gaynor, Michael A. Connally, Oberlin M. Carter.	Indictment No. 322. Violation Sections 5440 and 5438, R. S. Filed December 8th, 1899. A True Bill. Thomas S. McKey, Foreman.

Court adjourned to 10 o'clock tomorrow.

279 In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

UNITED STATES *vs.* BENJAMIN D. GREENE ET AL.	Indictment. Conspiracy to Defraud. Filed December 8, 1899.

The defendants Benjamin D. Greene, Edward H. Gaynor, John F. Gaynor, William T. Gaynor and Michael A. Connolly in the above-stated case being called, the United States attorney presents the following-described documents:

Notice from the said United States attorney under date of March 5, 1900, to Abram J. Rose, Esq., attorney for said Benjamin D. Greene, Edward H. Gaynor, John F. Gaynor and William T. Gaynor, returned served March 8, 1900, that said case would be called in this court on this the 12th day of March, 1900.

The answer of the said Abram J. Rose, under date of March 8, 1900, to said notice, and a copy of the answer of the said United States attorney to the said Abram J. Rose under date of March 12, 1900.

Also notice from said United States attorney to M. A. Connolly, Esq., under date of March 10, 1900, that said case would be called on this 12th day of March, and return of service thereon of March 10, 1900.

And the said Benjamin D. Greene, Edward H. Gaynor, John F. Gaynor, and William T. Gaynor not appearing, and the said Michael A. Connolly appearing:

It is ordered by the court that the aforesaid documents
280 hereto attached be filed with the clerk of this court.

In open court, March 12, 1900.

EMORY SPEER,
United States Judge.

Office of the United States attorney, southern district of Georgia.

MACON, GA., *March* 5, 1900.

Abram J. Rose, Esq., attorney, New York city.

You are hereby notified as attorney for Benjamin D. Greene, Edward H. Gaynor, John F. Gaynor, and William T. Gaynor in the case of United States *vs.* Benjamin D. Greene and others, charged with conspiracy to defraud, in which case the parties above named represented by you are defendants, that the above-stated case will be called in the United States district court at Savannah, Georgia, on Monday March 12, 1900, at 10 o'clock a. m. in order that the defendants to the indictment in said case may appear in person, and interpose any objections which they may desire to urge as to the empaneling of the grand jury that returned the true bill of indictment in said case, and such other objections as they may make to the validity of said indictment.

Very respectfully, MARION ERWIN,
U. S. Attorney.

I hereby certify that on the 8th day of March, 1900, at the city of New York, in my district, I personally served the within subpœna (notice) upon the within-named Abram J. Rose by exhibiting to him the within original, and at the same time leaving with him
281 a copy thereof.

WILLIAM HENKEL,
United States Marshal, Southern District of New York.

Dated March 8, 1900. (J. B. B.)

L. Laflin Kellogg, Abram J. Rose, Arthur H. Smith, Alfred C. Pette, Philip M. Brett.

Law offices of Kellogg, Rose & Smith, Equitable building, 120 Broadway.

NEW YORK, *March 8th*, 1900.

Hon. Marion Erwin, U. S. attorney, Macon, Ga.

SIR: On March 8th, 1900, at ten a. m. I was served by the U. S. marshal of the southern district of New York, with a letter purporting to be signed by you, of which the following is a copy:

"Abram J. Rose, Esq., attorney, New York city.

You are hereby notified as attorney for Benjamin D. Green, Edward H. Gaynor, John F. Gaynor and William T. Gaynor in the case of United States *vs.* Benjamin D. Green and others, charged with conspiracy to defraud in which case the parties above named represented by you are defendants, that the above-stated case will be called in the United States district court at Savannah, Georgia, on Monday —— 12, 1900, at 10 o'clock a. m. in order that the defendants to the indictment in said case may appear in person and interpose any objections which they may desire to urge as to the

empaneling of the grand jury that returned the true bill of indictment in said case and *other* other objections as they may make to the validity of said indictment.

Very respectfully,

MARION ERWIN,
U. S. Attorney."

Hon. M. Erwin—2.

In reply thereto, permit me to call your attention to certain facts connected with the case mentioned in your letter.

282 On December 13th, 1899, the assistant U. S. attorney for the southern district of New York made a sworn complaint before U. S. Commissioner John Shields, in the case of United States *vs.* Benjamin D. Greene, John F. Gaynor, Edward H. Gaynor and William T. Gaynor, charging them with a conspiracy to defraud the United States. The complaint also states that an indictment had been found against these parties with others by a grand jury drawn in the eastern division of the southern district of Georgia, and there was annexed to the complaint what purported to be a copy of said alleged indictment. The complaint asked that the defendants above named be removed to the district above named for trial. This indictment is, I assume, the one referred to in your letter of March 5th, 1900.

On this complaint Commissioner Shields issued his warrant and the parties above named voluntarily appeared before him, demanded an examination and were held to bill, which they furnished. The commissioner, after several hearings, held these parties to await a warrant of removal by the district judge and they went before Hon. Addison Brown, United States district judge for the southern district of New York. They were taken in custody by the U. S. marshal; the judge fixed their bail and they gave bail for their appearance before him when required and to surrender themselves to the marshal if the judge should determine that a warrant of removal to Georgia should be granted.

The question raised and the application for such warrant have, as you know, been argued before Judge Brown and the matter is pending before him, his decision being expected at any time.

I have not stated here anything not within your own knowledge or for purposes of refreshing your recollection, but because it seems to me that your letter to me must have been written without

283 considering these facts.

The United States has instituted a proceeding in the southern district of New York, which is pending here and under which the parties must be personally present in that district day by day, and you, on behalf of the United States, in the same case ask or demand that these same parties appear at the same time; the suggestion being that if they fail to do so they will waive or lose some of their rights.

I cannot believe that you as a fair man would insist on this or that a fair court would hold this to be the law. Your client cannot ask impossibilities and the law does not require them.

I am not admitted to practice in the U. S. district court for the

southern district of Georgia and have not been retained by the parties named in your letter to appear there for them in the case you mention.

I have, therefore, sent a copy of this letter to the clerk of the United States district court for the southern district of Georgia, with the request that if you file your letter to me with the clerk or make it part of the record, that he will cause this letter to be filed and thus prevent any inference being drawn that your courteous letter went without attention.

As the time is so short, I send this letter to Savannah in care of the clerk, as I am fearful it might not reach you before Monday if sent to Macon.

Yours truly, ABRAM J. ROSE.

284 (Copy.)

Department of Justice, office of United States attorney, southern district of Georgia.

SAVANNAH, GEORGIA, *March* 12, 1900.

Abram J. Rose, Esq., of the firm of Kellogg, Rose & Smith, 120 Broadway, New York city.

SIR: I have the honor to acknowledge the receipt of your letter of the 8th instant in answer to notice under date of March 5th, 1900, from me as United States attorney, to you as attorney for Benjamin D. Greene and others, which notice was served upon you on the 8th instant and which notice informed the said Benjamin D. Greene, Edward H. Gaynor, John F. Gaynor and William T. Gaynor, charged on indictment in the United States district court for the eastern division of the southern district of Georgia with conspiracy to defraud, that the said case would be called in the United States district court in Savannah on Monday March 12th instant at 10 o'clock a. m. at which time they might be present in person and make such preliminary motions as might be appropriate.

I note that you cite the proceedings in New York in which the defendants mentioned in the indictment are under bond to appear before the Honorable Addison Brown, United States district judge there, on proceedings for removal on the indictment from Georgia, as a reason why the defendants cannot in person appear before the court here. I may be in error about it, but to my mind these proceedings furnish the strongest reasons why the defendants should be held in laches so far as the proceedings here are concerned. Neither can I concede that you as an attorney admitted to practice in the circuit and district courts of the United States for the southern district of New York and before the Supreme Court of the United States and who appeared for and are now representing the defendants in resist-
285 ing the proceedings taken against them under section 1014 of the Revised Statutes, before the commissioner and district judge in New York to force their appearance to answer the indictment before the United States court here, can limit your responsibility as attorney so far as notice to you is notice to defendants by

claiming that you have not yet been employed to represent the defendants in the district court in Georgia. Nothing prevents the defendants from giving bond before Judge Brown for appearance before the court here, or from surrendering themselves to the marshal and being brought here at Government expense, except the objections to the removal made by the defendants through you as their attorney. The withdrawal by you of these objections would have enabled the defendants to be here to meet the charges against them. It would seem therefore that the impossibility of having the defendants in two places at once to which you refer is only the difficulty of surmounting a barrier raised by the defendants themselves and one which they may remove at pleasure. The defendants, of course, have an election to exhaust every legal remedy in their reach to delay or postpone their appearance to answer the indictment before the United States district court in Georgia.

They can ignore the proceedings here until all legal remedies may be exhausted and until they may be finally brought here, if that should be the result. But with full notice of the proceedings here and opportunity given to appear and be heard, they take that course at the peril of being adjudged in laches, should their efforts to evade being brought before the court here prove abortive.

At the opening of the court today I will file my notice, this letter and your letter as requested by you.

Thanking you for your prompt reply to my notice, and for
286 your courteous attentions while in New York, I remain,

Very respectfully, MARION ERWIN,
United States Attorney.

Department of Justice, office of United States attorney, southern district of Georgia.

SAVANNAH, GEORGIA, *March* 10, 1900.

M. A. Connolly, Esq., Savannah, Georgia.

SIR: The case of The United States *vs.* Benjamin D. Greene and others charged on indictment with conspiracy to defraud, in the United States district court for the eastern division of the southern district of Georgia, in which case you are one of the defendants, will be sounded on Monday, March 12th, at 10 o'clock a. m. in the said court at Savannah, Georgia, at which time you may be present in person and make any preliminary motions you may think appropriate.

Respectfully, MARION ERWIN,
United States Attorney.

I certify that on March 10th, 1900, in the city of Savannah Ga., Chatham county, within my district, I personally served M. A. Connolly with a copy of the within paper, which he read in my presence.

JOHN M. BARNES,
U. S. Marshal.

287 (Endorsement:) United States district court, eastern division, southern district of Ga.—United States *vs.* Benjamin D. Greene, *et al.* Order directing the clerk to file certain documents presented by the U. S. attorney. Filed in office this 12th day of March, 1900. H. H. King, clerk.

288 (By Mr. ERWIN:)

Q. Mr. Gillespie, there was a session of the district court at the February term 1900, at Savannah, was there not?

A. Yes.

Q. Did you prepare these certified copies of certain proceedings had there in the case of The United States *v.* Benjamin D. Greene, *et al.*, in regard to certain proceedings taking place on the 12th day of March 1900, at the February term 1900 of the district court?

Mr. ROSE: This is objected to as long after this indictment was filed, after the time when the crime is charged to have been committed, after the irregularities and illegalities in relation to this jury had taken place, in the absence of and without notice to the defendants, and therefore cannot be binding upon them.

Mr. ERWIN: This is a preliminary question, Mr. Rose, and I propose to follow it.

Mr. ROSE: I know what it is, and I know it is a lie.

Objection overruled, exception taken.

A. I did prepare it.

Mr. ROSE: This is in March and the indictment was found in December preceding.

The COMMISSIONER: Yes.

Mr. ERWIN: Now I tender this certified copy of the proceedings had at the February term 1900 district court, eastern divis-
289 ion of the southern district of Georgia at Savannah.

The COMMISSIONER: What is the purport of them?

Mr. ERWIN: The report shows that notice was given by myself as United States district attorney for the southern district of Georgia to Messrs. Rose, Kellogg and Smith, service being perfected here in New York on Mr. Rose, as attorney for these defendants in this proceeding here, being a preliminary proceeding looking to the holding of the defendants to bail in the southern district of Georgia, of a session of the court in Savannah, and that their case would be called on March 12th 1900, and that they would then be given the opportunity in person to raise any of these matters in regard to the empaneling of the jury or irregularities, if they desired to make them, and Mr. Rose replied to my letter which he requested to be put on file of the court, and which was put on file, together with the whole correspondence and the order of the court thereon directing that it should be put on file, this being a certified copy of those proceedings.

Mr. ROSE: This is three months after the indictment was filed, when the proceeding was pending here. The district attorney

thought he would be smart and try to put us in, or get some
290 advantage because we did not appear there in Savannah. I had been retained to defend these gentlemen here in this court and not in Savannah; not on the trial of this indictment; not for any purpose other than to protect and to resist the removal proceedings. No notice was ever given to them according to these papers. A letter was served on me, as attorney for them, requiring the defendants to appear there and raise any motions of way of demurrer or motion to quash, to which Mr. Rose responded that I was not the attorney for these gentlemen in Savannah and never have been. Your notice is no good. Thereupon I sent that letter, and I stated if you used your letter to me, suspecting some scheme to foreclose my clients' rights, you used my answer. That is what I said about putting it on record; and thereupon the district attorney and the court together——

The COMMISSIONER: That is a polite invitation on the part of Mr. Erwin to get you down there.

Mr. ROSE: Yes sir. He seeks to bind a client in one proceeding by notice to me in another, and that they cannot do. Then in response to that I saw in the paper that the learned district attorney replied to my communication to him, my letter having been sent only a day or two, and his reply being dated March 12th and his notice being that I must be there on the 10th. That reply never
291 was received by me in any way, shape or fashion, and I doubt very much if it was ever sent.

Mr. ERWIN: It was sent, sir.

Mr. ROSE: I never have seen that reply, nor the substance of it, except that I saw in a paper that it was stated in the court that it was replied to.

The COMMISSIONER: Do you offer that in evidence?

Mr. ROSE: I would like to have your honor reserve your decision on it.

The COMMISSIONER: Decision reserved.

Paper marked for identification Exhibit 337. S. H., November 8th, 1900.

292 For iden. Ex. 337. S. H. Nov. 8th, 1900.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia, } ss:

I, H. H. King, clerk of the district court of the United States of America for the southern district of Georgia, do hereby certify that the writing annexed to this certificate is a true copy of its respective original now on file, and remaining on record in my office, to wit: In the case of United States *vs.* Benjamin D. Greene, *et al.* Indictment for conspiracy. Order directing the clerk to file certain documents presented by the U. S. attorney.

In witness whereof, I have caused the seal of the said court to be hereunto affixed, at the city of Savannah, in the southern district of Georgia, this 18th day of October, in the year of our Lord, one

thousand nine hundred and — and of the Independence of the United States, the one hundred and twenty-fifth.

293 [SEAL.] H. H. KING, *Clerk.*

Mr. ERWIN: The Supreme Court has held that they are estopped even without notice and when they have a knowledge of the pendency of an indictment. They had that knowledge immediately after that indictment in December 1899, as otherwise shown in this court; but so that they would have abundant opportunity I gave them notice when they could appear there and there would be a session of the court and every opportunity in the world, which went beyond the requirement of the statute, because the fact that the courts were to meet at stated times is fixed by law and they had that opportunity, but I went beyond that and gave them written notice through their counsel and his letter states in it that he recognized the

294 fact that the case here in New York was the same case as that pending in Savannah. The record speaks for itself, and so far as the insinuation that my answer was not received, why I take it as coming from the source it comes from, and if necessary I will prove by testimony other than mine that the letter was actually sent.

The COMMISSIONER: Anything further from this witness?

Mr. ERWIN: No sir.

Mr. ROSE: Now I would like to have this appear on the record whether I am correct in what I state. The district attorney has stated that a letter was sent to the office of Rose, Kellogg and Smith,—that was the wrong name, it being Kellogg, Rose and Smith,—of which he asks to introduce a certified copy. No such letter appears in this paper, the letter being addressed to Abram J. Rose. It was served upon me by the marshal. The firm of Kellogg, Rose and Smith are the attorneys in the proceedings here before you. To that letter I personally replied. He has stated that I recognized that this proceeding was a part of the proceeding there at the trial, which I did not do any such thing in my letter.

Mr. ERWIN: The letter speaks for itself.

Mr. ROSE: "The United States have instituted a proceeding in the southern district of New York *when* is pending here, and

295 under which the defendants must be personally present in the district court day by day, and you on behalf of the United States in the same case ask or demand that these same parties appear at the same time, the suggestion being that if they failed to do so, they will waive or lose some of their rights." Now this is spelled, "l-o-o-s-e" some of their rights. If this is a certified copy I did not write "l-o-o-s-e" anyhow. "I am not admitted to practice in the United States district court for the southern district of Georgia, and have not been retained by the parties named in your letter to appear for them in the case you mention. I therefore send a copy of this letter to the clerk of the United States district court for the southern district of Georgia with a request that if you file your letter to me with the clerk, or make it a part of the record, that he will cause this letter to be filed and thus present any inference being drawn

that your courteous letter went without attention." And yet, the learned district attorney in the face of that says that I asked to have this letter filed on the bare statement appearing and regardless of any statement on his part that he was to use his letter. I only asked to have it filed in case of a contingency arising that he put his letter on the record.

296 Mr. ERWIN: And I put mine on file, of course, as I intended to do, and it was your request that yours be put on file, and I did so.

Mr. ROSE: That was not your statement. You said I sent that letter back and asked you to have it filed.

Mr. ERWIN: So you did.

297 EXHIBIT "G." Referred to in the Annexed Petition.

The President of the United States of America to the marshal of the United States for the southern district of New York and to his deputies or any or either of them:

Whereas, Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor have been arrested and imprisoned in this district by John A. Sheilds, an United States commissioner for the southern district of New York, for an offence alleged to have been committed in another district, that is to say, for having on the 1st day of January in the year one thousand eight hundred and ninety-seven at the southern district of Georgia, unlawfully, knowingly, and feloniously amongst themselves, and with divers other persons, unknown, conspired, confederated and agreed together to defraud the United States of America of divers large sums of money by means of a certain fraudulent scheme devised by said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor and others and which was then and there in process of execution by them. That said fraudulent scheme was first devised, concocted and put in operation in said southern district of Georgia, by and between the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor, Edward H. Gaynor and others, on or about the year of our Lord one thousand eight hundred and ninety-one, and has been continuously in process of execution in said southern district of Georgia by and between said parties, as by reference to the original warrant of arrest and the commitment endorsed there-

298 upon which are hereto attached, will more fully and at large appear, and whereas the said southern district of Georgia is that in which trial of the said offense is to be had and the United States attorney of this district having applied to me for a warrant of removal under the provisions of section 1014 of the Revised Statutes of the United States.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to remove the said Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor forthwith to the southern district of Georgia and to safely deliver them to the marshal of the said district, or to such person as shall be by the said marshal deputized to receive them.

Given under my hand this 28th day of May in the year one thousand nine hundred and one.

ADDISON BROWN,
United States District Judge, Southern District of New York.

Attest: SAMUEL H. LYMAN, *Clerk.*

[SEAL.]

299 [Endorsed:] The United States of America *vs.* Benjamin D. Greene, John F. Gaynor, William T. Gaynor, and Edward H. Gaynor. Warrant of removal. Henry L. Burnett, U. S. att'y.

Let the defendants be bailed in the sums specified in the order of May 23rd, 1901, May 28th, 1901.

ADDISON BROWN, *U. S. D. J.*

The defendants having given bail as required, they are hereby discharged from custody.

ADDISON BROWN, *U. S. D. J.*

MAY 28TH, 1901—1.25 p. m.

A true copy.
[SEAL.]

SAMUEL H. LYMAN, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I hereby certify that the within-named defendants were this day surrendered to me by their sureties before Judge Lacombe and that I now hold them in custody under the within warrant.
June 8, 1901.

WM. HENKEL,
U. S. Marshal.

300 (Endorsed:) United States circuit court, southern district of New York.—In the matter of the petition of Benjamin D. Greene, *et al.* against William Henkel United States marshal, etc.—Petition for writ of *habeas corpus.*—Kellogg & Rose, att'ys for petitioners, 120 Broadway, New York.—U. S. circuit court, Filed Jun- 8, 1901, John A. Shields, clerk.

301 At a stated term of the circuit court of the United States in and for the southern district of New York, held at the United States court and post-office building in the borough of Manhattan, of the city of New York, on the 8th day of June, 1901.
Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Petition of BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and EDWARD H. GAYNOR for a Writ of *Habeas Corpus.*

On reading and filing the petition of Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, verified the 8th day of June 1901, for a writ of *habeas corpus* directed to William

Henkel, Esq., United States marshal in and for the southern district of New York requiring him to bring and have the petitioners before this court together with the true cause of their detention and restraint of the petitioners, to the end that this court may act thereupon as of right and according to law ought to be done, and it appearing from the said petition that the petitioners are not entitled to the said writ,

Now, after hearing Abram J. Rose, Esq., of counsel for said
302 petitioners in support of said application and due deliberation having been had, it is

Ordered that such application be and the same hereby is, in all things denied.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) United States circuit court, southern district of New York.—In the matter of the petition of Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor for a writ of *habeas corpus*.—Order denying application for writ of *habeas corpus*. Kellogg & Rose, att'ys for petitioners, 120 Broadway, New York.—U. S. circuit court, Filed Jun- 8, 1901, John A. Shields, clerk.

303 Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and EDWARD H. GAYNOR for a Writ of *Habeas Corpus*.

BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and Edward H. Gaynor, Appellants,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, Appellee.

SIRS: Please take notice that Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, the petitioners above named hereby appeal to the Supreme Court of the United States from the final order made and entered herein on the 8th day of June, 1901, denying their application for a writ of *habeas corpus* and from each and every part of the said order.

Dated at the city of New York on the 8th day of June, 1901.

Yours, etc.,
KELLOGG & ROSE,
Attorneys and Counsellors for Petitioners, 120 Broadway, Manhattan, New York City, New York.

To Hon. Henry L. Burnett, United States attorney in and for the southern district of New York.

304 To William Henkel, Esq., United States marshal for the southern district of New York.

To John A. Shields, Esq., clerk of the circuit court of the United States in and for the southern district of New York.

(Endorsed:) U. S. circuit court, southern dist. of New York.—In the matter of the petition of Benjamin D. Greene, *et al.*, etc., against William Henkel, United States marshal, etc.—Notice of appeal.—Kellogg & Rose, att'vs for appellants, 120 Broadway, New York.—Service of a copy of within notice of appeal is hereby admitted. Dated New York, June 8, 1901. Wm. Henkel, U. S. marshal.—Henry L. Burnett, U. S. att'y.—U. S. circuit court, Filed Jun 8, 1901, John A. Shields, clerk.

305 Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and EDWARD H. GAYNOR for a Writ of *Habeas Corpus*.

BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and Edward H. Gaynor, Appellants,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, Appellee.

The petition of the above-named petitioners for an order allowing an appeal to the Supreme Court of the United States from the final order hereinbefore entered in this case.

Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, petitioners and appellants above named, each feeling himself aggrieved by the final order heretofore made and entered by this court in this case on the 8 day of June 1901, whereby it was ordered that their application for a writ of *habeas corpus*, directed to William Henkel, United States marshal in and for the southern district of New York, requiring the said marshal to
306 bring and have your petitioners before this court, together with the true cause of the detention of your petitioners, be, and the same thereby was denied, now comes, by Kellogg & Rose, their solicitors and counsel, and petitions this court for an order allowing them and each of them, said petitioners, to prosecute an appeal from said final order to the Supreme Court of the United States under and according to the laws of the United States in that behalf made. Your petitioners are advised by counsel that there are grave doubts as to whether the proceedings referred to in the petition have not infringed the constitutional rights of your petitioners and that the order of removal of the petitioners referred to in said petition is without authority of law and that the United States district court for the southern district of Georgia, to which court the said order of removal directs the said United States marshal to remove your petitioners for trial, is without jurisdiction to try your petitioners for the offenses set out in said proceedings, and your petitioners and each of them desire in good faith to submit

the constitutional questions and other questions involved to the Supreme Court for their determination.

Your petitioners will ever pray.

B. D. GREENE.
JOHN F. GAYNOR.
WM. T. GAYNOR.
EDWARD H. GAYNOR.

307 KELLOGG & ROSE,
Attorneys for Petitioners, 120 *Broadway,*
Manhattan, New York City, N. Y.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, being each severally and separately duly sworn, say they are the petitioners above named; that the foregoing petition is true to their own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters they believe it to be true.

B. D. GREENE.
JOHN F. GAYNOR.
WM. T. GAYNOR.
EDWARD H. GAYNOR.

Sworn to before me this 8 day of June 1901.
JOHN A. SHIELDS, *U. S. Com.*

The foregoing petition on appeal is granted and claim of appeal therein made is allowed. Supersedeas bond fixed at $250.

Done in open court this 8th day of June 1901.
E. HENRY LACOMBE,
United States Circuit Judge.

308 (Endorsed:) U. S. circuit court, southern dist. of New York.—In the matter of the petition of Benjamin D. Greene, *et al.* etc. against William Henkel, United States marshal, etc.—Petition of appeal.—Kellogg & Rose, att'ys for petitioners, 120 Broadway, New York. U. S. circuit court, Filed Jun- 8, 1901, John A. Shields, clerk.

309 In the Supreme Court of the United States.

In the Matter of the Petition of BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and EDWARD H. GAYNOR for a Writ of *Habeas Corpus.*

Now comes the petitioners, Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, by Kellogg & Rose, their counsel in connection with their petition of appeal to the Supreme Court from the final order of the circuit court of the United States, in and for the southern district of New York, entered herein

on the 8th day of June, 1901, denying a writ of *habeas corpus*, and make and file the following assignment of errors:

The court erred:

1. In denying the petitioners' application for a writ of *habeas corpus*.

2. In refusing to grant the said application.

3. In deciding that it appears from the petition itself that the relators were not entitled to such writ.

4. In holding that the alleged grand jury which presented and filed the alleged indictment, all as mentioned in the petition,
310 was a valid grand jury or that it was legally and properly drawn.

5. In holding that the said alleged indictment stated an offence against the laws of the United States.

6. In holding that the United States district court for the southern district of Georgia has jurisdiction to try the petitioners under the said alleged indictment.

7. In holding that the warrant of removal made by the United States district judge for the southern district of New York was issued upon a finding of probable cause.

8. In holding that the petitioners were in custody of the said William Henkel, United States marshal in and for the southern district of New York, and deprived of their liberty by him by due process of law.

9. In not holding the action of the said alleged grand jury on the 8th day of December 1899, in the eastern division of the southern district of Georgia was, so far as the petitioners were concerned, of no force and effect and that the alleged indictment filed by such alleged grand jury furnished no ground or basis upon which the petitioners could be tried or removed from the southern district of New York for trial.

By reason whereof, the petitioners pray that the said order denying said application for a writ of *habeas corpus* be reversed,
311 and that your petitioners be discharged from custody.

BENJAMIN D. GREENE,
JOHN F. GAYNOR,
WILLIAM T. GAYNOR,
EDWARD H. GAYNOR,
All by ABRAM J. ROSE,
Their Counsel.

KELLOGG & ROSE,
Counsel for Petitioners, 120 *Broadway, N. Y.*

(Endorsed:) In the Supreme Court of the United States.—In the matter of the petition of Benjamin D. Greene and others for a writ of *habeas corpus*.—Assignment of errors.—Kellogg & Rose, att'ys for petitioners, 120 Broadway, New York.—U.S. circuit court, Filed Jun 8, 1901, John A. Shields, clerk.

312 Supreme Court of the United States.

In the Matter of the Petition of BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and EDWARD H. GAYNOR for a Writ of *Habeas Corpus*.

BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and Edward H. Gaynor, Appellants,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, Appellee.

Know all men by these presents, that we, Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, as principals and James D. Leary, William B. Kirk and Edgar Alvord, as sureties, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars to be paid to the United States; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 8th day of June, 1901.

Whereas lately, to wit, on this 8th day of ——, 1901, at a circuit court of the United States in and for the southern district of
313 New York in a proceeding therein pending, an order was entered denying the application of the above-named petitioners for a writ of *habeas corpus*.

And the said petitioners having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said circuit court to review the same:

Now, the condition of the above obligation is such that if the said petitioners, Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, shall prosecute said appeal to effect and shall answer all costs if they shall fail to make the said appeal good, then this obligation to be void; else to remain in full force and effect.

B. D. GREENE.	[SEAL.]
JOHN F. GAYNOR.	[SEAL.]
WM. T. GAYNOR.	[SEAL.]
EDWARD H. GAYNOR.	[SEAL.]
JAMES D. LEARY.	[SEAL.]
D. B. KIRK.	[SEAL.]
EDGAR ALVORD.	[SEAL.]

Sealed and delivered and taken and acknowledged this 8th day of June, 1901, before me.

JOHN A. SHIELDS,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

James D. Leary, William B. Kirk and Edgar Alvord, each being duly sworn, for himself says that he is worth more than the
314 sum of five hundred dollars over and above all his just debts and liabilities.

JAMES D. LEARY.
W. B. KIRK.
EDGAR ALVORD.

Sworn to before me this 8th day of June, 1901.

JOHN A. SHIELDS,
U. S. Comm'r.

Approved as to form, amount and sufficiency.

E. HENRY LACOMBE,
United States Circuit Judge.

(Endorsed:) United States Supreme Court.—In the matter of the petition of Benjamin D. Greene *et al.* etc. against William Henkel, United States marshal, etc.—Supersedeas bond.—Kellogg & Rose, att'ys for appellants, 120 Broadway, New York.—U. S. circuit court, Filed Jun- 8, 1901, John A. Shields, clerk.

315 By the Hon. E. Henry Lacombe, one of the justices of the circuit court of the United States of the second circuit.

To Hon. Henry L. Burnett, United States attorney for the southern district of New York, and to William Henkel, Esq., United States marshal in and for the southern district of New York, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at the Capitol in the city of Washington in the District of Columbia on the 6th day of July 1901, pursuant to a petition, allowance and notice of appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor are appellants and you the said marshal are appellee, to show cause, if any there be, why the final order of the said circuit court in said petition, allowance and notice of appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan in the city of New York, in the district and circuit above mentioned this 8 day of June in the year of our Lord one thousand nine hundred and one.

E. HENRY LACOMBE,
United States Circuit Judge.
KELLOGG & ROSE,
Attorneys for Appellants,
120 *Broadway, Manhattan, New York City, New York.*

316 [Endorsed:] F. & A. B. 1875 United States circuit court. Southern dist. of New York. In the matter of the petition of Benjamin D. Greene *et al.*, etc. against William Henkel, United States marshal, etc. Citation. Kellogg & Rose, att'ys for appellants 120 Broadway, New York. Due and timely service of a copy of within citation is hereby admitted. Dated New York, 8 June 1901. Wm. Henkel U. S. marshal Henry L. Burnett U. S. attorney U. S. circuit court. Filed Jun- 8 1901 John A. Shields, clerk.

317 At a stated term of the circuit court of the United States, in and for the southern district of New York, held at the United States court and post-office building in the borough of Manhattan, of the city of New York, on the 8th day of June 1901.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Petition of BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and EDWARD H. GAYNOR for a Writ of *Habeas Corpus*.

BENJAMIN D. GREENE, JOHN F. GAYNOR, WILLIAM T. GAYNOR, and Edward H. Gaynor, Appellants,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, Appellee.

An appeal having been duly taken to the Supreme Court of the United States by the above-named petitioners and appellants from an order this day entered herein denying their application for a writ of *habeas corpus*,

Now, on motion of Kellogg & Rose, attorneys for the petitioners, it is

318 Ordered that pending the said appeal the custody of the said Benjamin D. Greene, John F. Gaynor William T. Gaynor and Edward H. Gaynor shall not be disturbed and that they and each of them remain in the custody in which they are at present, under the warrant issued by Addison Brown, United States district judge on the 28th day of May 1901, and be kept and detained in such custody pending and until the determination of the said appeal by the said Supreme Court of the United States and the further order of the court thereon.

E. HENRY LACOMBE,
U. S. Circuit Judge.

On application of the appellants, it is

Ordered that United States Commissioner Shields take recognizances in the sum of twenty-five thousand dollars for the appearance of the appellant, Benjamin D. Greene; in the sum of twenty-five thousand dollars for the appearance of the appellant, John F. Gaynor; in the sum of ten thousand dollars for the appearance of the appellant, William T. Gaynor; in the sum of ten thousand dol-

lars for the appearance of the appellant, Edward H. Gaynor,
319 on the entry of the final order in the United States circuit court upon the mandate of the Supreme Court of the United States.

Dated, New York, June 8 1901.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) United States circuit court, southern district of New York.—In the matter of the petition of Benjamin D. Greene and o'rs for a writ of *habeas corpus*.—Benjamin D. Greene and others, app'lts ag'st William Henkel, U. S. marshal, appellee.—Order as to custody and bail.—Kellogg & Rose, att'ys for appellants, 120 Broadway, New York.—U. S. circuit court, Filed Jun- 8, 1901, John A. Shields, clerk.

320 UNITED STATES OF AMERICA, }
Southern District of New York. }

Be it remembered that on the 8th day of June A. D., 1901, before me, John A. Shields, one of the United States commissioners, duly appointed by the district court of the United States for the southern district of New York in the second circuit, to take acknowledgments of appeal affidavits and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the provisions of the act of Congress in that behalf, personally came Benjamin D. Greene, principal, and James D. Leary, surety, and severally acknowledged themselves to owe to the United States of America, that is to say: the said Benjamin D. Greene, the sum of twenty-five thousand dollars, and the said James D. Leary the sum of twenty-five thousand dollars, separately to be levied and made on their respective goods, chattels, lands and tenements to the said United States, if default shall be made in the condition following, to wit:

Whereas the said Benjamin D. Greene was detained in the custody of William Henkel, as United States marshal for the southern district of New York under commitment and warrant of removal to the southern district of Georgia, granted by Hon. Addison Brown, judge of the United States district court for the southern district of New York on the 28th day of May, 1901, and

321 Whereas the said Benjamin D. Greene made an application to the United States circuit court before Hon. E. Henry Lacombe, circuit judge, on the 8th day of June 1901, for a writ of *habeas corpus* directed to said William Henkel, United States marshal in and for the southern district of New York, requiring said marshal to bring and have said Benjamin D. Greene before said circuit court, together with the true cause of his detention, and

Whereas on the 8th day of June 1901, the said E. Henry Lacombe, United States circuit judge, did make his final order denying the said application for a writ of *habeas corpus* and remanding the said Benjamin D. Greene to the custody of the said marshal for removal

to the southern district of Georgia under the order of the said district judge, and

Whereas the said Benjamin D. Greene has appealed from said final order to the Supreme Court of the United States, and

Whereas the said E. Henry Lacombe, United States circuit judge, did thereupon allow such appeal and order that pending said appeal the custody of said Benjamin D. Greene should not be disturbed and did also order that the said Benjamin D. Greene be enlarged upon bail in the sum of twenty-five thousand dollars for his appearance to answer the exigency and determination of said appeal
322 and to personally abide the final decision and determination of said Supreme Court of the United States in that behalf.

Now, therefore, the condition of this obligation is such that if the said Benjamin D. Greene shall duly personally appear in the said United States circuit court for the southern district of New York to answer the exigency and determination of said appeal and personally abide the final decision and determination of said Supreme Court of the United States and of said circuit court of the United States upon the mandate of said Supreme Court of the United States and obey and abide the orders of said circuit court of the United States and not depart without leave upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void, otherwise to be and remain in full force and virtue.

B. D. GREENE. [SEAL.]
JAMES D. LEARY. [SEAL.]

Taken and acknowledged before me the day and year first above written.

JOHN A. SHIELDS,
United States Commissioner.

323 SOUTHERN DISTRICT OF NEW YORK, *ss:*

James D. Leary of the city of New York, being duly sworn, says that he is worth the sum of fifty thousand dollars over and above all his just debts and liabilities.

JAMES D. LEARY.

Sworn to before me this 8th day of June 1901.

JOHN A. SHIELDS,
United States Commissioner.

Recognizance approved as to form and sufficiency.

E. HENRY LACOMBE,
United States Circuit Judge.

(Endorsed:) United States Supreme Court.—In the matter of the petition of Benjamin D. Greene, *et al.*, etc. against William Henkel, United States marshal, etc.—Recognizance of Benjamin D. Greene.—Kellogg & Rose, att'ys for appellants, 120 Broadway, New York.—U. S. circuit court, Filed Jun- 8, 1901, John A. Shields, clerk.

324 UNITED STATES OF AMERICA, }
Southern District of New York. }

Be it remembered that on the 8th day of June, A. D., 1901, before me, John A. Shields, one of the United States commissioners, duly appointed by the district court of the United States for the southern district of New York in the second circuit, to take acknowledgments of appeal, affidavits and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the provisions of the act of Congress in that behalf, personally came John F. Gaynor, principal, and William B. Kirk, surety, and severally acknowledged themselves to owe to the United States of America, that is to say: the said John F. Gaynor, the sum of twenty-five thousand dollars and the said William B. Kirk, the sum of twenty-five thousand dollars, separately to be levied and made on their respective goods, chattels, lands and tenements to the said United States, if default shall be made in the condition following, to wit:

Whereas the said John F. Gaynor was detained in the custody of William Henkel, as United States marshal for the southern district of New York under commitment and warrant of removal to the southern district of Georgia, granted by Hon. Addison Brown, judge of the United States district court for the southern district of New York on the 28th day of May 1901, and

325 Whereas the said John F. Gaynor made an application to the United States circuit court before Hon. E. Henry Lacombe, circuit judge, on the 8th day of June 1901, for a writ of *habeas corpus* directed to said William Henkel, United States marshal in and for the southern district of New York, requiring said marshal to bring and have said John F. Gaynor before said circuit court, together with the true cause of his detention, and

Whereas on the 8th day of June 1901, the said E. Henry Lacombe, United States circuit judge, did make his final order denying said application for a writ of *habeas corpus* and remanding the said John F. Gaynor to the custody of the said marshal for removal to the southern district of Georgia under the order of the said district judge, and

Whereas the said John F. Gaynor has appealed from said final order to the Supreme Court of the United States, and

Whereas the said E. Henry Lacombe, United States circuit judge, did thereupon allow such appeal and order that pending said appeal the custody of said John F. Gaynor should not be disturbed and did also order that the said John F. Gaynor be enlarged upon bail in the sum of twenty-five thousand dollars for his appearance to answer the exigency and determination of said appeal and

326 to personally abide the final decision and determination of said Supreme Court of the United States in that behalf.

Now, therefore, the condition of this obligation is such that if the said John F. Gaynor shall duly personally appear in the said United States circuit court for the southern district of New York, to answer the exigency and determination of said appeal and personally abide

the final decision and determination of said Supreme Court of the United States and of said circuit court of the United States upon the mandate of said Supreme Court of the United States and obey and abide the orders of said circuit court of the United States and not depart without leave upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void, otherwise to be and remain in full force and virtue.

JOHN F. GAYNOR. [SEAL.]
W. B. KIRK. [SEAL.]

Taken and acknowledged before me the day and year first above written.

JOHN A. SHIELDS,
United States Commissioner.

327 SOUTHERN DISTRICT OF NEW YORK, *ss:*

William B. Kirk of the city of Syracuse, being duly sworn, says that he is worth the sum of fifty thousand dollars over and above all his just debts and liabilities.

W. B. KIRK.

Sworn to before me this 8th day of June, 1901.

JOHN A. SHIELDS,
U. S. Commissioner.

Recognizance approved as to form and sufficiency.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) United States Supreme Court.—In the matter of the petition of Benjamin D. Greene, *et al.* etc. against William Henkel, United States marshal, etc.—Recognizance of John F. Gaynor.—Kellogg & Rose, att'ys for appellants, 120 Broadway, New York.—U. S. circuit court, Filed Jun- 8, 1901, John A. Shields, clerk.

328 UNITED STATES OF AMERICA, }
Southern District of New York. }

Be it remembered that on the 8th day of June A. D., 1901, before me, John A. Shields, one of the United States commissioners, duly appointed by the district court of the United States for the southern district of New York in the second circuit, to take acknowledgments of appeal, affidavits and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the provisions of the act of Congress in that behalf, personally came Edward H. Gaynor, principal, and Edgar Alvord, surety, and severally acknowledged themselves to owe to the United States of America, that is to say: the said Edward H. Gaynor the sum of ten thousand dollars, and the said Edgar Alvord, the sum of ten thousand dollars, separately to be levied and made on their respective goods, chattels, lands and tenements to the said United States, if default shall be made in the condition following, to wit:

Whereas the said Edward H. Gaynor was detained in the custody of William Henkel, as United States marshal for the southern district of New York under commitment and warrant of removal to the southern district of Georgia, granted by Hon. Addison Brown, judge of the United States district court for the southern district of New York on the 28th day of May, 1901, and

329 Whereas the said Edward H. Gaynor made an application to the United States circuit court before Hon. E. Henry Lacombe, circuit judge, on the 8th day of June 1901, for a writ of *habeas corpus* directed to said William Henkel, United States marshal in and for the southern district of New York, requiring said marshal to bring and have said Edward H. Gaynor before said circuit court, together with the true cause of his detention, and

Whereas on the 8th day of June 1901, the said E. Henry Lacombe, United States circuit judge, did make his final order denying the said application for a writ of *habeas corpus* and remanding the said Edward H. Gaynor to the custody of the said marshal for removal to the southern district of Georgia under the order of the said district judge, and

Whereas the said Edward H. Gaynor has appealed from sail final order to the Supreme Court of the United States, and

Whereas the said E. Henry Lacombe, United States circuit judge, did thereupon allow such appeal and order that pending said appeal the custody of said Edward H. Gaynor should not be disturbed and did also order that the said Edward H. Gaynor be enlarged upon bail in the sum of ten thousand dollars for his appearance to answer the exigency and determination of said appeal and to

330 personally abide the final decision and determination of the Supreme Court of the United States in that behalf.

Now, therefore, the condition of this obligation is such that if the said Edward H. Gaynor shall duly personally appear in the said United States circuit court for the southern district of New York to answer the exigency and determination of said appeal and personally abide the final decision and determination of said Supreme Court of the United States and of said circuit court of the United States upon the mandate of said Supreme Court of the United States and obey and abide the orders of said circuit court of the United States and not depart without leave upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void, otherwise to be and remain in full force and virtue.

EDWARD H. GAYNOR. [SEAL.]
EDGAR ALVORD. [SEAL.]

Taken and acknowledged before me the day and year first above written.

JOHN A. SHIELDS,
United States Commissioner.

331 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edgar Alvord of the city of Syracuse, being duly sworn, says that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

EDGAR ALVORD.

Sworn to before me this 8th day of June, 1901.

JOHN A. SHIELDS,
United States Commissioner.

Recognizance approved as to form and sufficiency.

E. HENRY LACOMBE,
United States Circuit Judge.

(Endorsed:) United States Supreme Court.—In the matter of the petition of Benjamin D. Greene, *et al.* etc. against William Henkel, United States marshal, etc.—Recognizance of Edward H. Gaynor.—Kellogg & Rose, att'ys for appellants, 120 Broadway, New York.—U. S. circuit court, Filed Jun- 8, 1901, John A. Shields, clerk.

332 UNITED STATES OF AMERICA,
Southern District of New York.

Be it remembered that on the 8th day of June, A. D. 1901, before me, John A. Shields, one of the United States commissioners, duly appointed by the district court of the United States for the southern district of New York in the second circuit, to take acknowledgments of appeal, affidavits and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the provisions of the act of Congress in that behalf, personally came William T. Gaynor, principal, and William B. Kirk, surety, and severally acknowledged themselves to owe to the United States of America, that is to say: the said William T. Gaynor the sum of ten thousand dollars, and the said William B. Kirk, the sum of ten thousand dollars, separately to be levied and made on their respective goods, chattels, lands and tenements to the said United States, if default shall be made in the condition following, to wit:

Whereas the said William T. Gaynor was detained in the custody of William Henkel, as United States marshal for the southern district of New York under commitment and warrant of removal to the southern district of Georgia, granted by Hon. Addison Brown, judge of the United States district court for the southern district of New York on the 28th day of May, 1901, and

333 Whereas the said William T. Gaynor made an application to the United States circuit court before Hon. E. Henry Lacombe, circuit judge, on the 8th day of June, 1901, for a writ of *habeas corpus* directed to said William Henkel, United States marshal in and for the southern district of New York, requiring said marshal to bring and have said William T. Gaynor before said circuit court, together with the true cause of his detention, and

Whereas on the 8th day of June 1901, the said E. Henry Lacombe,

United States circuit judge, did make his final order denying the said application for a writ of *habeas corpus* and remanding the said William T. Gaynor to the custody of the said marshal for removal to the southern district of Georgia under the order of the said district judge, and

Whereas the said William T. Gaynor has appealed from said final order to the Supreme Court of the United States, and

Whereas the said E. Henry Lacombe, United States circuit judge, did thereupon allow such appeal and order that pending said appeal the custody of said William T. Gaynor should not be disturbed and did also order that the said William T. Gaynor be enlarged upon bail in the sum of ten thousand dollars for his appearance to answer the exigency and determination of said appeal and
334 to personally abide the final decision and determination of the Supreme Court of the United States in that behalf.

Now, therefore, the condition of this obligation is such that if the said William T. Gaynor shall duly personally appear in the said United States circuit court for the southern district of New York to answer the exigency and determination of said appeal and personally abide the final decision and determination of said Supreme Court of the United States and of said circuit court of the United States upon the mandate of said Supreme Court of the United States and obey and abide the orders of said circuit court of the United States and not depart without leave upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void, otherwise to be and remain in full force and virtue.

WM. T. GAYNOR. [SEAL.]
W. B. KIRK. [SEAL.]

Taken and acknowledged before me the day and year first above written.

JOHN A. SHIELDS,
United States Commissioner.

335 SOUTHERN DISTRICT OF NEW YORK, *ss:*

William B. Kirk of the city of Syracuse, being duly sworn, says that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

W. B. KIRK.

Sworn to before me this 8th day of June 1901.

JOHN A. SHIELDS,
U. S. Commissioner.

Recognizance approved as to form and sufficiency.

E. HENRY LACOMBE,
United States Circuit Judge.

(Endorsed:) United States Supreme Court.—In the matter of the petition of Benjamin D. Greene, *et al.* etc. against William Henkel, United States marshal, etc.—Recognizance of William T. Gaynor.—Kellogg & Rose, att'ys for appellants, 120 Broadway, New York.—U. S. circuit court, Filed Jun- 8, 1901, John A. Shields, clerk.

336 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 336 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled Benjamin D. Greene, John F. Gaynor, William T. Gaynor and Edward H. Gaynor, appellants against Henry L. Burnett, United States attorney for the southern district of New York and William Henkel, Esq. United States marshal, southern district of New York appellees, as the same remain of record and on file in my office.

Seal of U. S. Circuit Court, South. Dist. New York.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 1st day of July in the year of our Lord one thousand nine hundred and one and of the Independence of the said United States the one hundred and twenty-sixth.

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. Benjamin D. Greene *et al.* appellants *vs.* William Henkel, U. S. marshal, southern dist. of New York, appellee Transcript of record from the circuit court of the United States for the southern district of New York.

Endorsed on cover: File No. 18,218. S. New York—C. C. U. S. Term No. 365. Benjamin D. Greene, John F. Gaynor, William T. Gaynor, and Edward H. Gaynor, appellants, *vs.* William Henkel United States marshal in & for the southern district of New York. Filed July 10th, 1901.